रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. No. D. L. (N) 04/0007/2003—05

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सं. 6] नई दिल्ली, फरवरी 4—फरवरी 10, 2018, शनिवार/माघ 15— माघ 21, 1939
No. 6] NEW DELHI, FEBRUARY 4—FEBRUARY 10, 2018, SATURDAY/ MAGHA 15—MAGHA 21, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 2 फरवरी, 2018

का.आ. 236.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्द्वारा, केन्द्र सरकार भारत के प्रधान कोंसलावास, फ्रंकफर्ट में श्री मनोरंजन सिंह, सहायक अनुभाग अधिकारी को दिनांक 2 फरवरी, 2018 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2014]

प्रकाश चन्द, निदेशक (कोंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 2nd February, 2018

S.O. 236.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Manoranjan Singh, Assistant Section Officer as Assistant Consular Officer in Consulate General of India, Frankfurt to perform the Consular Services with effect from 2 February, 2018.

[No. T-4330/01/2014]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 2 फरवरी, 2018

का.आ. 237.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्द्वारा केन्द्र सरकार भारत के प्रधान कोंसलावास, फ़्रंकफ़र्ट में श्री बल्जींदर सिंह, सहायक अनुभाग अधिकारी को दिनांक 2 फरवरी, 2018 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2014]

प्रकाश चन्द, निदेशक (कोंसुलर)

New Delhi, the 2nd February, 2018

S.O. 237.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Baljinder Singh, Assistant Section Officer as Assistant Consular Officer in Consulate General of India, Frankfurt to perform the Consular Services with effect from 2 February, 2018.

[No. T-4330/01/2014]

PRAKASH CHAND, Director (Consular)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 2 फरवरी, 2018

का.आ. 238.—केन्द्रीय सरकार पेट्रोलियम एवं खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में उक्त अधिनियम के अधीन कर्नाटक राज्य के भीतर, हिंदुस्तान पेट्रोलियम कॉर्पोरेशन लिमिटेड की मंगलूर-हासन-मैसूर-सोलूर एलपीजी पाइपलाइन के लिए सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए डॉ. दासे गौड़ा एम, केएएस, कर्नाटक सरकार को उनके मौजूदा कार्यों के साथ-साथ, प्राधिकृत करती है।

[फा. सं. आर-11025(15)/2/2018-ओआर-I/ई-22573]

पवन कुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 2nd February, 2018

S.O. 238.—In pursuance of clause (a) of Section 2 of Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorizers Dr. Dase Gowda M, KAS, Government of Karnataka to perform the functions of Competent Authority for Hindustan Petroleum Corporation's Mangalore Hasan Mysore Solur LPG Pipeline under the said Act, in addition to his existing duties, within the territory of Karnataka.

[F. No. R-11025(15)/2/2018-OR-I/E-22573]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 2 फरवरी, 2018

का.आ. 239.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उप-धारा (1) भारत के राजपत्र (असाधारण), के अधीन जारी की गयी भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का. आ. 4083(अ) और 4084(अ), तारीख 14 दिसम्बर 2016, द्वारा हरियाणा राज्य में जयपुर से पानीपत तक वाया तहसील रेवाड़ी और बावल जिला रेवाड़ी जयपुर-पानीपत नाफ्था पाइपलाइन नाफ्था परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा एक पाइपलाइन बिछाने के प्रयोजन के लिए उक्त अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन के अपने आशय की घोषणा की थी।

और उक्त अधिसूचना की प्रतियाँ जनता को तारीख 14.12.2016 को उपलब्ध करा दी गई थीं।

और उक्त अधिनियम की धारा 6 की उप-धारा (1) के अनुसरण में सक्षम प्राधिकारी ने केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है।

और केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाना चाहिए।

अत: अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा(1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि इस अधिसूचना के संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमि में पाइपलाइन बिछाने के लिए उपयोग का अधिकार को अर्जित किया जाता है।

यह और कि केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा(4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निर्देश देती है कि उक्त भूमि के उपयोग का अधिकार इस अधिसूचना के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने की बजाए, सभी विल्लंगमों से मुक्त हो कर इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

पेट्रोलियम और खनिज पाइपलाइन अधिनियम, 1962 की धारा 10 के अधीन किसी भी क्षतिपूर्ति के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड पूर्णतया उत्तरदायी होगी और पाइपलाइन से सम्बन्धित किसी भी मामले पर केन्द्रीय सरकार के विरुद्ध कोई वाद दावा या कानूनी कार्यवाही नहीं हो सकेगी।

अनुसूची

तहसील : रेवाड़ी **जिला : रेवाड़ी** **राज्य : हरियाणा**

गांव का नाम	खसरा नं.	क्षेत्रफल		
		हेक्टेयर	एयर	वर्ग मीटर
जैतड़ावास	25//9	00	00	03
	1/2	00	01	23
	2/1	00	03	75
	2/2	00	03	37
	3	00	06	89
	11//23	00	00	08
	11//24	00	05	90
	25/1	00	01	03
	25/2	00	05	53
	12//21	00	02	41
	20	00	04	17
	19	00	07	05
	18	00	04	52
	13	00	02	70
	14/1	00	05	20
	14/2	00	01	61
	15	00	06	46
	6	00	00	85

जैतड़ावास	13//11	00	00	09
	10	00	06	67
	9	00	06	58
	8	00	04	05
	7	00	03	35
	14	00	03	11
	15	00	06	83
	14//11/1	00	02	59
	11/2	00	00	65
	10	00	03	26
	9	00	06	09
	8	00	06	93
	7	00	03	88
	4	00	02	72
	5	00	06	92
	15//1	00	06	99
	2	00	02	25
	5//22	00	02	58
	कुल	**1**	**38**	**32**
भाडावास	119//22	00	01	64
	23	00	08	37
	24	00	03	45
	25	00	00	18
	16	00	06	72
	120//20/2	00	01	84
	20/1	00	05	29
	120//19	00	03	45
	12	00	03	18
	13/2	00	05	83
	13/1	00	00	68
	14	00	06	04
	7	00	00	70
	15	00	00	08
	6	00	06	70
	121//10	00	06	81
	9	00	01	43
	2	00	05	34
	3	00	06	48
	4	00	02	62
	110//24/2	00	04	75
	25	00	06	88

भाडावास	109//21	00	06	96
	22	00	05	08
	19	00	00	61
	23/2	00	01	70
	18	00	04	75
	16	00	06	39
	108//20	00	06	49
	17/1	00	00	29
	14/1	00	06	22
	16	00	00	28
	15	00	05	01
	107//11	00	05	88
	12	00	06	66
	13/1	00	06	38
	8/3	00	00	19
	7	00	04	89
	6	00	06	35
	106//10	00	06	67
	9/2	00	06	44
	8/2	00	02	57
	8/1	00	04	13
	7	00	02	59
	4/1	00	00	24
	4/2	00	03	62
	5	00	06	31
	105//1/2	00	00	72
	1/1	00	06	00
	2/1	00	07	48
	कुल	**2**	**11**	**10**
भवाड़ी	16//3	00	05	60
	4	00	03	99
	7	00	03	01
	6	00	03	91
	कुल	**00**	**16**	**51**

तहसील : बावल जिला : रेवाड़ी राज्य : हरियाणा

गांव का नाम	**खसरा नं.**	**क्षेत्रफल**		
		हेक्टेयर	**एयर**	**वर्ग मीटर**
खण्डेवड़ा	77//7	00	00	95
	6	00	02	15
	5	00	06	88
	53//25	00	02	33

खण्डेवड़ा	54//21	00	05	13
	20	00	06	49
	19	00	00	58
	11	00	00	06
	12/2	00	03	60
	12/1	00	03	52
	9/2	00	02	47
	9/1	00	00	13
	8	00	02	84
	3/2	00	01	77
	3/1	00	05	30
	4	00	00	20
	51//23	00	00	36
	24	00	06	93
	17	00	03	40
	16	00	03	10
	15	00	07	20
	6	00	02	10
	50//10	00	04	86
	1	00	07	00
	2	00	00	11
	29//21	00	00	49
	22	00	06	78
	19	00	03	94
	18	00	02	91
	13	00	06	91
	8	00	00	43
	14	00	00	13
	7/2	00	06	59
	7/1	00	00	03
	4	00	03	83
	5/1	00	01	58
	5/2	00	00	27
	26//25	00	06	99
	16/1	00	00	24
	25//20	00	06	55
	21	00	00	21
	11	00	03	82
	12/1	00	02	44
	9	00	06	78
	8	00	00	11
	2	00	00	46

खण्डेवड़ा	3	00	06	34
	9//23	00	07	20
	17	00	03	30
	10//1/1	00	01	41
	1/2	00	04	04
	4//21	00	02	20
	22	00	05	33
	19	00	05	32
	18	00	02	74
	कुल	**01**	**78**	**83**
टांकडी	91//15	00	01	57
	92//11	00	05	53
	10/2	00	03	87
	10/1	00	01	70
	9	00	02	24
	2	00	08	07
	3	00	00	18
	88//22	00	00	35
	23	00	07	64
	18/1	00	01	97
	27	00	00	03
	88//17	00	07	30
	14	00	01	71
	15	00	08	05
	6	00	00	26
	87//10	00	05	69
	1	00	04	40
	2	00	03	56
	73//22	00	04	54
	18	00	05	13
	13	00	02	92
	14	00	05	36
	7	00	04	40
	6	00	05	37
	5/2	00	03	41
	5/3	00	01	06
	74//1/1	00	03	88
	1/2	00	01	33
	61//21	00	03	57
	20/1	00	00	06
	22/2	00	05	05
	19	00	04	26

टांकडी	12/2	00	03	09
	9	00	05	94
	8	00	00	53
	2	00	01	48
	3	00	00	68
	26	00	00	72
	51//23	00	05	97
	18/2	00	02	48
	18/1	00	05	06
	13	00	00	41
	14	00	05	96
	7	00	06	59
	6	00	00	66
	4/2	00	00	06
	5	00	07	22
	40//25/3	00	01	10
	25/2	00	01	40
	39//21/1	00	03	66
	20	00	07	10
	19/2	00	00	07
	11	00	00	59
	12	00	07	08
	9	00	04	94
	8	00	01	98
	3	00	07	37
	33//23	00	03	11
	24	00	03	61
	17/1	00	06	63
	14/3	00	01	09
	15/3	00	04	29
	15/2	00	00	71
	15/1	00	01	16
	6	00	06	35
	5/2	00	00	04
	34//10	00	00	07
	1	00	06	46
	22//21	00	03	42
	22	00	02	96
	19	00	07	14
	12	00	01	72
	13	00	05	36
	8	00	06	55

टांकडी	7	00	00	68
	3	00	00	05
	4	00	06	57
	19//24	00	04	65
	16	00	07	18
	15	00	02	62
	20//11	00	04	26
	10	00	03	88
	कुल	**02**	**87**	**16**
नरसिंहपुर गढ़ी	6//9	00	02	58
	6//1	00	00	36
	2	00	06	80
	2//22	00	04	86
	23/1	00	01	09
	23/2	00	01	14
	18	00	06	33
	13/2	00	02	44
	14	00	00	96
	कुल	**00**	**26**	**56**
धारण	58//14	00	03	92
	7	00	06	16
	6	00	01	01
	5	00	07	02
	57//1	00	02	37
	46//21	00	06	56
	22	00	03	26
	19	00	04	93
	18/2	00	00	10
	18/1	00	03	79
	13	00	05	65
	8/2	00	03	40
	8/1	00	01	73
	3	00	03	82
	4	00	02	24
	41//24	00	05	86
	17	00	06	09
	14	00	04	55
	15	00	01	73
	6	00	05	78
	26	00	00	77

धारण	5/3	00	03	35
	32//25	00	02	00
	16	00	00	01
	33//21/2	00	06	48
	22	00	06	52
	19/1	00	00	06
	23	00	01	27
	18/2/1	00	03	87
	18/1/1	00	01	57
	17/2/1	00	02	62
	17/1/1	00	04	14
	34//20	00	00	25
	34//11	00	05	94
	10	00	06	64
	1/2	00	02	51
	2	00	03	65
	25//22	00	06	68
	19	00	04	62
	18	00	00	88
	13	00	06	35
	8	00	06	34
	3	00	03	26
	4	00	03	00
	20//24	00	06	42
	17/2	00	01	51
	17/1	00	03	29
	16	00	01	08
	14	00	00	01
	15	00	06	39
	6	00	06	42
	5	00	03	22
	21//1	00	03	39
	15//21	00	07	27
	20	00	01	32
	19	00	06	14
	12	00	05	44
	13/1	00	01	95
	8	00	06	25
	3/2	00	02	63
	4	00	04	63
	10//24/2	00	01	99
	24/1	00	05	09

धारण	25	00	00	21
	17	00	00	34
	16	00	06	70
	15	00	04	41
	11//11	00	03	33
	10	00	07	74
	2/2	00	00	10
	1	00	00	26
	2/1	00	04	92
	4//22	00	05	98
	23/1	00	01	34
	18	00	07	35
	13	00	03	41
	14	00	05	28
	कुल	**02**	**88**	**56**
बेरवाल	28//7	00	05	90
	6	00	00	39
	4	00	00	19
	5	00	07	16
	22//25/1	00	03	16
	25/2	00	00	58
	23//21	00	03	02
	20	00	06	99
	11	00	01	09
	12	00	06	12
	9	00	05	50
	8	00	01	44
	3/1	00	05	90
	3/2	00	00	53
	14//23/1	00	02	88
	24	00	04	40
	17	00	07	00
	14	00	00	43
	15	00	06	37
	6	00	04	32
	13//10	00	02	74
	1	00	01	09
	कुल	**00**	**77**	**20**
बधराना	56//1	00	05	96
	52//21/1	00	00	03
	21/2	00	02	29
	22	00	05	01

बधराना	19	00	03	56
	18/2/2	00	03	60
	18/2/1	00	01	72
	18/1	00	01	60
	17	00	03	82
	14	00	03	11
	15	00	06	69
	51//11	00	04	22
	51//10/1	00	02	73
	9	00	03	74
	कुल	**00**	**48**	**08**
प्रागपुरा	27//9	00	02	16
	8	00	06	40
	3/1	00	00	31
	7	00	00	38
	4/1	00	01	94
	4/2	00	03	66
	कुल	**00**	**14**	**85**
सुलखा	48//5	00	07	48
	49//1	00	01	43
	46//21	00	05	89
	22	00	07	35
	23	00	02	44
	18/2	00	04	98
	17	00	07	26
	16	00	03	46
	15	00	03	96
	45//11	00	06	67
	12	00	04	79
	9	00	02	59
	8	00	07	38
	7	00	06	06
	6	00	00	05
	4/3	00	01	22
	5	00	07	36
	44//1	00	06	09
	2	00	00	15
	32//21	00	00	68
	22	00	07	30
	23	00	06	99
	18	00	00	31
	24	00	00	40
	17	00	07	00

सुलखा	16	00	07	27
	15	00	00	03
	33//20	00	01	35
	11	00	06	11
	12	00	07	02
	13	00	02	70
	8	00	03	33
	7	00	06	81
	6	00	04	69
	5	00	01	53
	34//1/1	00	04	77
	1/2	00	01	62
	2/1	00	02	62
	2/2	00	03	50
	24//22/2	00	01	22
	23/1	00	06	96
	23/2	00	00	71
	24	00	07	08
	17	00	00	25
	25	00	00	50
	16	00	06	27
	23//20	00	07	12
	19	00	02	14
	12	00	05	12
	13	00	07	30
	14	00	04	19
	7	00	03	21
	6	00	07	42
	22//10	00	05	04
	1	00	00	64
	कुल	**2**	**27**	**81**

[फा. सं. आर—11025/(11)/97/2017—ओआर—I/ई—7823]

पवन कुमार, अवर सचिव

New Delhi, the 2nd February, 2018

S.O. 239.—Whereas, by the notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. No. 4083(E) and 4084(E) dated: 14.12.2016 issued under sub section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (herein after referred to as the said Act) the Central Government declared its intention to acquire the Right of User in the Lands specified in the Schedule appended to that notification for the purpose of laying pipeline for the transportation of Naphtha from Jaipur to Panipat (Via) Tehsil Rewari and Bawal, District Rewari, in the State of Haryana, a pipeline should be laid by the Indian Oil Corporation Limited, for implementing the Jaipur-Panipat Naphtha Pipeline Project.

And whereas, copies of the said notifications were made available to the public from 14.12.2016.

And whereas, the Competent Authority in pursuance of sub-section (1) of Section 6 of the said Act has submitted his report to the Central Government;

And whereas, the Central Government, after considering the said report is satisfied that the Right of User in the Land specified in the Schedule appended to this notification should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the Right of User in the said Land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the Right of User in the said Land shall instead of vesting in the Central Government, vest from the date of publication of this declaration, in the Indian Oil Corporation Limited free from all encumbrances.

Indian Oil Corporation Limited shall be exclusively liable for any compensation in terms of section 10 of the P & M P Act, 1962 and no suit, claim or legal proceeding would lie against the Central Government on any matter relating to pipeline.

SCHEDULE

Tehsil : Rewari **District : Rewari** **State : Haryana**

Name of Village	Khasra No.	Area		
		Hectare	Are	Square Meter
Jetrawas	25//9	00	00	03
	1/2	00	01	23
	2/1	00	03	75
	2/2	00	03	37
	3	00	06	89
	11//23	00	00	08
	11//24	00	05	90
	25/1	00	01	03
	25/2	00	05	53
	12//21	00	02	41
	20	00	04	17
	19	00	07	05
	18	00	04	52
	14/1	00	05	20
	14/2	00	01	61
	13	00	02	70
	15	00	06	46
	6	00	00	85
	13//11	00	00	09
	10	00	06	67
	9	00	06	58
	8	00	04	05
	7	00	03	35
	14	00	03	11
	15	00	06	83
	14//11/1	00	02	59
	11/2	00	00	65

Jetrawas	10	00	03	26
	9	00	06	09
	8	00	06	93
	7	00	03	88
	4	00	02	72
	5	00	06	92
	15//1	00	06	99
	15//2	00	02	25
	5//22	00	02	58
	Total	**1**	**38**	**32**
	119//22	00	01	64
	23	00	08	37
	24	00	03	45
Bhadawas	25	00	00	18
	16	00	06	72
	120//20/2	00	01	84
	20/1	00	05	29
	19	00	03	45
	120//12	00	03	18
	13/2	00	05	83
	13/1	00	00	68
	14	00	06	04
	7	00	00	70
	15	00	00	08
	6	00	06	70
	121//10	00	06	81
	9	00	01	43
	2	00	05	34
	3	00	06	48
	4	00	02	62
	110//24/2	00	04	75
	25	00	06	88
	109//21	00	06	96
	22	00	05	08
	19	00	00	61
	23/2	00	01	70
	18	00	04	75
	16	00	06	39
	108//20	00	06	49
	17/1	00	00	29
	14/1	00	06	22
	16	00	00	28
	15	00	05	01

Bhadawas	107//11	00	05	88
	12	00	06	66
	13/1	00	06	38
	8/3	00	00	19
	14	00	01	18
	26	00	00	56
	7	00	04	89
	6	00	06	35
	106//10	00	06	67
	9/2	00	06	44
	8/2	00	02	57
	8/1	00	04	13
	7	00	02	59
	4/1	00	00	24
	4/2	00	03	62
	5	00	06	31
	105//1/2	00	00	72
	1/1	00	06	00
	2/1	00	07	48
	Total	**2**	**11**	**10**
Bhawadi	16//3	00	05	60
	4	00	03	99
	7	00	03	01
	6	00	03	91
	Total	**00**	**16**	**51**

Tehsil : Bawal **District : Rewari** **State : Haryana**

Name of Village	Khasra No.	Area		
		Hectare	Are	Square Meter
Khandevda	77//7	00	00	95
	6	00	02	15
	5	00	06	88
	53//25	00	02	33
	54//21	00	05	13
	20	00	06	49
	19	00	00	58
	11	00	00	06
	12/2	00	03	60
	12/1	00	03	52
	9/2	00	02	47
	9/1	00	00	13
	8	00	02	84
	3/2	00	01	77
	3/1	00	05	30

Khandevda	4	00	00	20
	51//23	00	00	36
	24	00	06	93
	17	00	03	40
	16	00	03	10
	15	00	07	20
	6	00	02	10
	50//1	00	07	00
	2	00	00	11
	10	00	04	86
	29//21	00	00	49
	22	00	06	78
	19	00	03	94
	18	00	02	91
	13	00	06	91
	8	00	00	43
	14	00	00	13
	7/2	00	06	59
	7/1	00	00	03
	4	00	03	83
	5/1	00	01	58
	5/2	00	00	27
	26//25	00	06	99
	16/1	00	00	24
	25//20	00	06	55
	21	00	00	21
	11	00	03	82
	12/1	00	02	44
	9	00	06	78
	8	00	00	11
	2	00	00	46
	3	00	06	34
	9//23	00	07	20
	17	00	03	30
	10//1/1	00	01	41
	1/2	00	04	04
	4//21	00	02	20
	22	00	05	33
	19	00	05	32
	18	00	02	74
	Total	**1**	**78**	**83**
Tankri	91//15	00	01	57
	92//11	00	05	53
	10/2	00	03	87

Tankri	10/1	00	01	70
	9	00	02	24
	2	00	08	07
	3	00	00	18
	88//22	00	00	35
	23	00	07	64
	18/1	00	01	97
	27	00	00	03
	88//17	00	07	30
	14	00	01	71
	15	00	08	05
	6	00	00	26
	87//10	00	05	69
	1	00	04	40
	2	00	03	56
	73//22	00	04	54
	18	00	05	13
	13	00	02	92
	14	00	05	36
	7	00	04	40
	6	00	05	37
	5/2	00	03	41
	5/3	00	01	06
	74//1/1	00	03	88
	1/2	00	01	33
	61//21	00	03	57
	20/1	00	00	06
	22/2	00	05	05
	19	00	04	26
	12/2	00	03	09
	9	00	05	94
	8	00	00	53
	2	00	01	48
	3	00	00	68
	26	00	00	72
	51//23	00	05	97
	18/2	00	02	48
	18/1	00	05	06
	13	00	00	41
	14	00	05	96
	7	00	06	59
	6	00	00	66
	4/2	00	00	06
	5	00	07	22

Tankri	40//25/3	00	01	10
	25/2	00	01	40
	39//21/1	00	03	66
	20	00	07	10
	19/2	00	00	07
	11	00	00	59
	12	00	07	08
	9	00	04	94
	8	00	01	98
	3	00	07	37
	33//23	00	03	11
	24	00	03	61
	17/1	00	06	63
	14/3	00	01	09
	15/3	00	04	29
	15/2	00	00	71
	15/1	00	01	16
	6	00	06	35
	5/2	00	00	04
	34//10	00	00	07
	1	00	06	46
	22//21	00	03	42
	22	00	02	96
	19	00	07	14
	12	00	01	72
	13	00	05	36
	8	00	06	55
	7	00	00	68
	3	00	00	05
	4	00	06	57
	19//24	00	04	65
	16	00	07	18
	15	00	02	62
	20//11	00	04	26
	10	00	03	88
	Total	**02**	**87**	**16**
Narsinghpur Garhi	6//9	00	02	58
	1	00	00	36
	2	00	06	80
	2//22	00	04	86
	23/2	00	01	14
	23/1	00	01	09
	18	00	06	33
	13/2	00	02	44

Narsinghpur Garhi	14	00	00	96
	Total	**00**	**26**	**56**
Dharan	58//14	00	03	92
	7	00	06	16
	6	00	01	01
	5	00	07	02
	57//1	00	02	37
	46//21	00	06	56
	22	00	03	26
	19	00	04	93
	18/2	00	00	10
	18/1	00	03	79
	13	00	05	65
	8/2	00	03	40
	8/1	00	01	73
	3	00	03	82
	4	00	02	24
	41//24	00	05	86
	17	00	06	09
	14	00	04	55
	15	00	01	73
	26	00	00	77
	6	00	05	78
	5/3	00	03	35
	32//25	00	02	00
	33//21/2	00	06	48
	22	00	06	52
	19/1	00	00	06
	23	00	01	27
	18/2/1	00	03	87
	18/1/1	00	01	57
	17/2/1	00	02	62
	17/1/1	00	04	14
	16	00	00	01
	34//20	00	00	25
	34//11	00	05	94
	10	00	06	64
	1/2	00	02	51
	2	00	03	65
	25//22	00	06	68
	19	00	04	62
	18	00	00	88
	13	00	06	35
	8	00	06	34

Dharan	3	00	03	26
	4	00	03	00
	20//24	00	06	42
	17/2	00	01	51
	17/1	00	03	29
	16	00	01	08
	14	00	00	01
	15	00	06	39
	6	00	06	42
	5	00	03	22
	21//1	00	03	39
	15//21	00	07	27
	20	00	01	32
	19	00	06	14
	12	00	05	44
	13/1	00	01	95
	8	00	06	25
	3/2	00	02	63
	4	00	04	63
	10//24/2	00	01	99
	24/1	00	05	09
	25	00	00	21
	17	00	00	34
	16	00	06	70
	15	00	04	41
	11//11	00	03	33
	10	00	07	74
	2/2	00	00	10
	1	00	00	26
	2/1	00	04	92
	4//22	00	05	98
	23/1	00	01	34
	18	00	07	35
	13	00	03	41
	14	00	05	28
	Total	**02**	**88**	**56**
Berwal	28//7	00	05	90
	6	00	00	39
	4	00	00	19
	5	00	07	16
	22//25/1	00	03	16
	25/2	00	00	58
	23//21	00	03	02
	20	00	06	99
	11	00	01	09
	12	00	06	12

Berwal	9	00	05	50
	8	00	01	44
	3/1	00	05	90
	3/2	00	00	53
	14//23/1	00	02	88
	24	00	04	40
	17	00	07	00
	14	00	00	43
	15	00	06	37
	6	00	04	32
	13//10	00	02	74
	1	00	01	09
	Total	**00**	**77**	**20**
	56//1	00	05	96
Badhrana	52//21/1	00	00	03
	21/2	00	02	29
	22	00	05	01
	19	00	03	56
	18/2/2	00	03	60
	18/2/1	00	01	72
	18/1	00	01	60
	17	00	03	82
	14	00	03	11
	15	00	06	69
	51//11	00	04	22
	51//10/1	00	02	73
	9	00	03	74
	Total	**00**	**48**	**08**
Pragpura	27//9	00	02	16
	8	00	06	40
	3/1	00	00	31
	7	00	00	38
	4/1	00	01	94
	4/2	00	03	66
	Total	**00**	**14**	**85**
	49//1	00	01	43
Sulkha	48//5	00	07	48
	46//21	00	05	89
	22	00	07	35
	23	00	02	44
	18/2	00	04	98
	17	00	07	26
	16	00	03	46
	15	00	03	96

Sulkha	45//11	00	06	67
	12	00	04	79
	9	00	02	59
	8	00	07	38
	7	00	06	06
	6	00	00	05
	4/3	00	01	22
	5	00	07	36
	44//1	00	06	09
	2	00	00	15
	32//21	00	00	68
	22	00	07	30
	23	00	06	99
	18	00	00	31
	24	00	00	40
	17	00	07	00
	16	00	07	27
	15	00	00	03
	33//20	00	01	35
	11	00	06	11
	12	00	07	02
	13	00	02	70
	8	00	03	33
	7	00	06	81
	6	00	04	69
	5	00	01	53
	34//1/1	00	04	77
	1/2	00	01	62
	2/1	00	02	62
	2/2	00	03	50
	24//22/2	00	01	22
	23/1	00	06	96
	23/2	00	00	71
	24	00	07	08
	17	00	00	25
	25	00	00	50
	16	00	06	27
	23//20	00	07	12
	19	00	02	14
	12	00	05	12
	13	00	07	30
	14	00	04	19
	7	00	03	21
	6	00	07	42
	22//10	00	05	04
	1	00	00	64
	Total	**02**	**27**	**81**

[F. No. R-11025/(11)/97/2017-OR-I/E-7823]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 6 फरवरी, 2018

का.आ. 240.—पेट्रोलियम और खनिज पाइपलाइन (भूमि पर उपयोगकर्ता के अधिकार का अधिग्रहण) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंड (क) और पेट्रोलियम और प्राकृतिक गैस मंत्रालय के अधिग्रहण में, भारत सरकार एस.ओ. संख्या 2575 दिनांक 03.08.2012 के अनुपालन अनुसार, इस तरह के अतिसंवेदन से पहले किए गए या किए जाने वाले कामों को छोड़कर, केंद्र सरकार इसके द्वारा, सुश्री अवंतिका एच. दर्जी, उप कलेक्टर, भूमि सुधार, कार्यालय/कलेक्टर खेड़ा, को सक्षम प्राधिकारी के कार्यों को पूरा करने के लिए, अपने स्वयं के कर्तव्यों के अतिरिक्त, अधिनियम के तहत, गुजरात राज्य के क्षेत्र में भारत ओमान रिफाइनरीज लिमिटेड (बीओआरएल) की वादिनार (गुजरात) से बीना (मध्य प्रदेश) तक क्रॉस कंट्री कच्चे तेल की पाइपलाइन के लिए प्राधिकृत करती है।

[फा. सं. आर-12031/197/2017-ओआर-I/ई-21538]

पवन कुमार, अवर सचिव

New Delhi, the 6th February, 2018

S.O. 240.—In pursuance of Clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962) and in supersession of the Ministry of Petroleum and Natural Gas. Government of India No. S.O. 2575 dated the 03.08.2012, except as respect things done or omitted to be done before such supersession, the Central Government hereby authorizes, Ms. Avantika H. Darji, Deputy Collector, Land Reforms, O/o Collector Kheda, to perform the functions of the Competent Authority, in addition to her own duties, under said Act, within the territory of State of Gujarat for the cross country crude pipeline from Vadinar (Gujarat) to Bina (Madhya Pradesh) of Bharat Oman Refineries Limited (BORL)

[F. No. R-12031/197/2017-OR-I/E-21538]

PAWAN KUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 1 फरवरी, 2018

का.आ. 241.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2 धनबाद के पंचाट (संदर्भ संख्या 51/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/1/2018 को प्राप्त हुआ था ।

[सं. एल-20012/51/2015-आई.आर. (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 1st February, 2018

S.O. 241.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.-2, Dhanbad (Ref. No. 51 of 2015) as shown in the Annexure in the Industrial Disputes between the empliyers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 18.01.2018.

[No. L-20012/51/2015-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No.2), AT DHANBAD

PRESENT : Shri R. K. Saran, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act.,1947.

REFERENCE No. 51 oF 2015

PARTIES : : The Vice President,

United Coal Workers Union,

UCWU, Paran Jiwan Circular Road, Gandhi Nagar,

Dhanbad 826001

Vs.

The General Manager,
Lodna Area of M/s. BCCL, P.O. Khas Jeenagora, Distt: Dhanbad.-828119

Order No**. L-20012/51/2015-IR(CM_I) dt. 07.07.2015**

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Mr.D.K.Verma, Ld. Advocate

State : Jharkhand Industry :

Coal Dated, Dhanbad, the 21st Dec. 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No**. L-20012/51/2015-IR (CM-I) dt. 07.07.2015.**

SCHEDULE

"Whether the action of the Management of Bagdigi Colliery under Lodna Area of M/s. BCCL to deny regularization of Shri Munilal Gond in the post of Night Guard is fair and justified? To what relief the concerned workman is entitled to ? "

2. Neither the Representative nor the workman concerned made appearance on date even earlier occasions also nor did file the much awaited W.S. by the workman whereas , Mr. D.K.Verma, , the Ld. Adv for the Management appeared on date. Though two notices dtt. 14.08.2015 and 30.10.2017 were served on the address of the Union, referred in the Order of the reference but to no avail .The case all about denial of regularization of the workman concerned seeking relief therein by challenging it.

A through and emphatically scrutiny, it transpires that the case seems to be no longer in existence in real terms as of now since the Union/workman has lost the interest to get the case to final adjudication. It all shows that the workman is no longer interested to proceed with the case of hearing through adjudication. As shown the gesture so far, neither the workman nor any Representative did not bother to turn up for appearance or filing the WS despite notices and having availed adjournments. Even after having availed so much adjournment since 21.09.2015 on the issue of filing the much awaited WS, an onus resting on the part of the Union, it does hold any significant ground at least for a while. So for the ends of the justice, it should be closed down rather set it rolling for indefinite period, So the case is wrapped up as No Dispute Award due to utter unwillingness on the part of the Union/petitioner. So the case is closed and accordingly an Award of 'No Dispute Award' is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 1 फरवरी, 2018

का.आ. 242.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, धनबाद के पंचाट (संदर्भ संख्या 30/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/1/2018 को प्राप्त हुआ था।

[सं. एल-20012/19/2015-आई.आर. (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 1st February, 2018

S.O. 242.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.-2, Dhanbad (Ref. No. 30 of 2015) as shown in the Annexure in the Industrial Disputes between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 18.01.2018.

[No. L-20012/19/2015-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD.

PRESENT: Shri R.K. Saran, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D.Act., 1947.

REFERENCE NO. 30 OF 2015.

PARTIES : : The . Gen. Secretary,
Koyla Ispat Mazdoor Panchayat
Chahtabad No.5 ,PO:Katrasgarh Dhanbad -828113.

Vs.

The General Manager,
Katras Area of M/s BCCL,
P.O.Sijua, Dhanbad 828121,
Order No.**L-20012/19/2015-IR(CM-I) dt. 27.04.2015**

APPEARANCES :

On behalf of the workman/Union : Mr.B.B.Pandey, Ld. Advocate

On behalf of the Management : Mr.D.K.Verma, Ld.Advocate

State : Jharkhand **Industry : Coal**

Dated, Dhanbad, the 12th Dec.,2017

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/19/2015-IR (CM-I) dt. 27.04.2015.

SCHEDULE

Whether the action of the Management of East Katras Colliery (amalgamated with New Akaskinari Colliery) under Katras Area of M/s B.C.C.L. in dismissing Shri Sarat Bauri from the services vide letter dated 13/6.6.2005 is fair and justified? To what relief the concerned workman is entitled to?

On receipt of the Order No.**L-20012/19/2015-IR (CM-I) dt. 27.04.2015** mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 30 of 2015 was registered on 06.05.2015 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Though the Union/Management through its own Ld. Advocates respectively appeared, and contested the case to the extent the case was reserved for Award.

2. This resume of the facts as emerging from the W.S. filed by the Sponsoring Union is that Shri Sarat Bauri was a permanent employee of the erstwhile East Katras Colliery later on amalgamated with New Akash Kinari Colliery under Govindpur Area of M/s BCCL .The workman concerned had been working as a M/Loader. The workman concerned was charge sheeted on the ground of absence from duty to which he replied promptly admitting his illness and thereby fairly explaining the reason by stating that he did not have any intention or desire to disobey the order of Higher Authority but the reason was purely personal and beyond the control. Contrary to it, the Management stepped up further by setting a Departmental Enquiry ignoring principle of natural justice. The proceeding of such enquiry was farce and its findings were perverse as stated in WS. Ultimately the Management illegally and arbitrarily dismissed the workman based on the outcome of perverse findings of the Enquiry Officer. As workers are worst hit of all, though there is absolute unanimity on the move doubting dismissal being beneficial in the long run to Industrial Relations so the dismissal for committing petty misconduct had shockingly a serious blow and disproportionate and excessively harsh, The action of dismissal inflicted upon the workman concerned is disproportionate to the misconduct the workman committed thereby seeking reinstatement with all back wages and other benefits. The Management thus bluntly violating the rules & regulations and the principle of Natural justice dismissed Shri Sarat Bauri the workman concerned on the charge of absentism from duty to which the workman concerned cried it foul , declaring the action unlawful improper and unjustified , as stated in WS. Therefore, the workman deserves sympathetic consideration from the Court to the extent the referring the matter back to the Tribunal for review over the quantum of penalty.

3, Whereas categorically denying all the allegations of the Sponsoring Union made in the WS the OP/Management as stated that the I.D. is slate one, the Union do not have locus-standi of raising the dispute after lapse of ten years as of now, so the Reference is prime facie not maintainable either in-law or facts without any explanation whatsoever regarding delay of 10 years on the part of the Union or workman in raising the I.D. during this the period as per provision of 2A of the I.D. Act ,1947 .And on that score, the Reference stands to be rejected ,as claimed by the Management in its W.S. The workman concerned Sarat Bauri , bearing Personnel No. 02919561 was employee of East Katras Colliery of Katras Area as M/loader .He had been absenting from duty without permission and information of the Management ,therefore he was charge sheeted by the Management dt. 28.05.2003 for commission of misconduct under clause 26.1.1. of the Certified Standing Order, an by-laws enforced in the Group of collieries by the BCCL Management .Since no worthwhile explanation was forthcoming, an enquiry was ordered by appointing an Enquiry Officer to conduct the domestic enquiry to ascertain to the issue by going into bottom of the fact and to provide ample opportunity to the workman concerned to come out in his defence in the line of natural justice. The Committee so set up for enquiry, held the workman concerned guilty of the charges brought against him as the he hopelessly had been failure to prove innocence .Thereafter the Disciplinary Authority issued the Show Cause Notice with copy of the Enquiry Report to the workman concerned.

The said act of absentism on the part of the workman is attracted and termed as misconduct in accordance with clause 26.1.1. of the Certified Standing Order ,an by-laws of the Management of the M/s BCCL .Though the Management came out with charge sheet against the workman of being remained absented for prolong period. Since reply remained unsatisfactory, leading to formation of Departmental Enquiry as to go into bottom of the fact to ascertain to what existent the workman had committed misconduct and to provide full opportunity to come out in his defence but the workman failed to avail the proper remedy . As the workman appeared and participated before the enquiry and submitted his reply to the said charge sheet. Thereafter the Enquiry Officer conducted the domestic enquiry in the presence of the workman concerned and to the line of the principal natural justice by ensuring sufficient opportunity to the workman to come out in his defence, finally submitted his report, holding therein the workman concerned guilty of the chares .After it the Disciplinary Authority issued 2nd Show Cause Notice to the workman with providing copy of the Enquiry Report. Finally, the Competent Authority came forward with handing out the dismissal letter after going through the said enquiry report for the proved misconduct as well as his past record. The alleged act of dismissal from service by the Competent Authority has been based not merely singling out to a specific incident but taking into the whole aspect of past services into account and other relevant service matters .Unfazed by the charges

moved by the Sponsoring Union, the OP/Management clarified further that in case of unconvinced about fairness of the said enquiry , the Management is committed to adducing evidence fresh.

It is an extreme example of gross negligence on the part of the workman. Thus, neither there was any sort of violation of the principle of natural justice, nor did it get mired at any stage as alleged by the petitioner/Union rather the alleged action of dismissal against the workman stands as fair, legal and in accordance with principle of natural justice.

4. So far the question to Group of the Collieries under the Management of M/s BCCL, a part of the Coal India Ltd., cases like dismissal on absentism ground seldom get significant where numerous cases on same footing might have been pouring in slowly but steadily . The issue, in question does not seem to be going away in a stroke. So long workman's case, nothing adverse the workman had throughout his career barring this one. No compensation can be adequate nor can it be of any respite for the sufferer if such incidents take place, rather Management to some extent is duty bound to see the way for survival .Though alleged absentism had definitely cost him employment and snatched his bread and butter in the days of hardship, need a little respite as last chance to prove his loyalty. Moreover the punishment of dismissal on ground of absentism inflicted upon the workman against the alleged misconduct shielding under the name of penalty appears undeniably disproportionate and a harsher one forcing for a review in the light of easing out of strain in Industrial relationship. It is also a shark reminder of the sorry state of affairs going on between Management and its workers.

5. In the totality of the facts and circumstances of the case where the workman concerned who was stripped of his livelihood, needs desperately an opportunity to reform himself to prove to be loyal and disciplined worker by offering him fresh appointment in the lowest Grade with two- year probation. Therefore it is ordered that the worker concerned be appointed as fresher in the lowest Cat-I with two-year period on probation since he joins the service subject to his identification as Ex-workman of the Colliery under the Management. As long as the back wages, it does not arise at all.

R. K. SARAN, Presiding Officer

नई दिल्ली, 1 फरवरी, 2018

का.आ. 243.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2 धनबाद के पंचाट (संदर्भ संख्या 23/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/1/2018 को प्राप्त हुआ था।

[सं. एल-20012/146/2015-आई.आर. (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 1st February, 2018

S.O. 243.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.-2, Dhanbad (Ref. No. 23 of 2016) as shown in the Annexure in the Industrial Disputes between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 18.01.2018.

[No. L-20012/146/2015-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD.

PRESENT: Shri R. K. Saran, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act.,1947.

REFERENCE NO 23 OF 2016.

PARTIES : : The Jt. Secretary(C),
Rashtriya Mazdoor Union,
At: Chiragora, Dhanbad-826001.

Vs.

The General Manager,

E.J.Area of M/s BCCL

PO: Bhowra, Dhanbad.-828302

Order No**. L-20012/146/2015-IR (CM-I) dt.02.02.2016**

APPEARANCES :

On behalf of the workman/Union : Mr M.N. Rawani Ld. Advocate.

On behalf of the Management : None

.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 07th Dec., 2017.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No**. L-20012/146/2015-IR (CM-I) dt.02.02.2016**

SCHEDULE

Whether the action of the Management of Amlabad Project of M/s BCCL in dismissing Shri Manbodh Singh, Pers. No. 02948776, Ex.Badli Miner Loader from the services of the Company vide order dated 20/24.07.2002 is justified and fair? To what relief the concerned workman is entitled to?

2. On receipt of the Order No**. L-20012/146/2015-IR (CM-I) dt.02.02.2016** of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 23 of 2016 was registered on 11.02.2016 , and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union made their appearance and filed their pleadings with photocopies of their documents as against the OP/Management whose representation in the instant case has been all along nil since inception and rolling out as reference. The case was contested to the extent it stands reserved for Award.

3. The case as briefed in W.S. by the Ld Counsel about that the workman Manbodh Singh a permanent employee bearing P. No. 02948776 designated as Badli/M. Loader of Amlabad Colliery/Project of M/s BCCL a Group of Collieries be exclusively based at Dhanbad under the part of the Coal India Limited had abruptly been framed charge sheet by the Management on 20.112001 .In reply to the said charge- sheet the workman stated that he had been seriously ill and was undergoing treatment under Dr. T.P. Dutta and informed the Management of his absence accordingly for three times by Registered post. Despite this all, contrary to it, the Management went ahead by appointing an Enquiry Officer to conduct the departmental enquiry. The departmental enquiry was conducted on 05.04.2002 and submitted the report on 20.04.2002 .In the enquiry the Enquiry Officer admitted having knowledge of the alleged treatment of ailment seriousness in nature ,the workman had been suffering from, a fact that was also corroborated by the two witness of the Management side also as stated in the WS .Needless to say, the Management in open admission in the form of the statement made by the Enquiry Officer categorically stated in its conclusion that the employee concerned duly informed the Management his absence duly supported by the Treatment Certificate was kept to be put up to the Project Officer for necessary action. Prior to the dismissal, the Management issued an letter asking for reply in writing within 72 hours of receipt as to why he should not be dismissed from the services the Company .This letter also, the workman received on 04.06.2002 and replied promptly on that very day .Despite this all ,the Management vehemently and whimsically and arbitrarily passed the order of dismissal dt.28/30.05.2002

Factually the workman concerned had been absent from his duty since 27.09.2001 and was framed charge sheet on 20.11.2001 leading to an departmental enquiry was conducted based on the charges contained in the said charge sheet on 27.09.2001. Though post dismissal the workman concerned made fervent appeal before the Management twice stating herein the circumstances and grounds he attributed his absents with an Undertaking of non- occurrence of such misconduct in rest period of his service life but ironically failed to fetch an desirable result. Actually the workman had again been suffering from orthopedic with Citika since 23.08.2003 to 20.02.2015 and, thus after a prolonged treatment when he was fit for his duty on 21.2.2015, he preferred an Industrial Dispute before the Asstt. Labour Commissioner (C), Dhanbad that resulted in failure and subsequently birth of the aforesaid Reference for adjudication through trial. So the alleged action of the Management about dismissal put the workman untold sufferings

and hardship to sustain his livelihood with his family in absence of no alternative source of income for family. So the alleged action of the Management about dismissal stands not only unjustified but arbitrary and bad in law also, seeking reinstatement into service with no full back wages whatsoever ,

4 Contrary to it the OP/ Management has not came out for filing WS cum rejoinder a onus resting their part since way back 27.04.2016 despite having availed no less than ten adjournments and a fresh notice for filing mush awaited WS to counter the charges brought in by the Sponsoring Union against the OP/Management. The prolonged silence maintained by the OP/Management is conspicuous to implied that the OP/Management has nothing to say over the issue nor did have objection whatsoever to the way the case set to be rolling.

5. No wonder ,cases of absentism get insignificant , unprecedented .There is nothing unusual specifically when the M/Loader in Groups of the Collieries under the BCCL Management mostly hailing from illiteracy backgrounds, intent to move on prolonged leave as being scared of the safety points of view and often evade stepping into the underground Mines which at times proves fatal and disastrous despite best mechanism of safety apparatus in place and its periodical reviews. Summing up, quantum of the punishment as dismissal inflicted upon the workman concerned for the misconduct of absentism appears a little bit harsher and disproportionate too, paying the way for survive as last chance once for all..

6. Though, there is nothing improper , unlawful and wrong-doings if the workman be provided a little bit reprieve as a last chance but simultaneously with severe warning to mend himself . Ultimately in the light of the above, it is ordered for fresh appointment of the workman concerned as Cat. -I with probation up to two years subject to proof of workman's identity and Medical fitness .So far back wages, it does not arises at all

R. K. SARAN, Presiding Officer

नई दिल्ली, 1 फरवरी, 2018

का.आ. 244.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2 धनबाद के पंचाट (संदर्भ संख्या 61/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/1/2018 को प्राप्त हुआ था।

[सं. एल-20012/70/2015-आई.आर. (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 1st Februay, 2018

S.O. 244.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby published the award of the Central Government Industrial Tribunal-cum-Labour Court No.-2, Dhanbad (Ref. No. 61 of 2015) as shown in the Annexure in the Industrial Disputes between the empliyers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 18.01.2018.

[No. L-20012/70/2015-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri R.K. Saran**,** Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act.,1947

REFERENCE NO. 61 OF 2015

PARTIES : The Secretary,
Koyla Ispat Mazdoor Panchyat,
Post Box No. 59,PO:Jharia,
Dhanbad -828111.

Vs.

The General Manager,
P.B Area of M/s. BCCL,
PO: Kusunda, Dhanbad -828116

Order No**. L-20012/70/2015-IR(CM-I) dated 19.08.2015**

APPEARANCES :

On behalf of the workman/Union : Mr.S.C.Gaur, Ld. Advocate

On behalf of the Management : None .

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 14th Dec. 2017

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No**.** L-20012/70/2015-IR (CM-I) dated 19.08.2015.

SCHEDULE

"Whether the action of the Management of Simlabahal Colliery under P.B. Area of M/s. BCCL in dismissing Sri Yadav Rajwar, Ex. M/Loader vide letter dated 22.07.1997 is fair and justified? To what relief the concerned workman is entitled to?"

On receipt of the Order No**. L-20012/70/2015-IR (CM-I) dated 19.08.2015** mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 61 of 2015 was registered on 01.09.2015 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

The Union only filed its pleadings and photocopies of their documents. So long the O.P./Management representation, it has been marked all along nil since inception. The case was contested to the extent it stands reserved for Award.

2. This Reference case as narrated by the Sponsoring Union in the WS about the workman namely Sri Yadav Rajwar ,an Ex. M/Loader of Simlabahal Colliery who had been very sincere ,obedient with no past track record of unauthorized absence from duties abruptly came into contact of "Jaundice in the last month of 1995 .He flatly denied having ever being charge-sheeted under reference earlier especially under the provision of the Certified Standing Orders enforced in the Management of M/s BBCL ,the name the Group of Collieries exclusively based at Dhanbad nor was any charges ever slapped over some sort of disobedience or misconduct issued to him. Rather Management went ahead with the said charge-sheet dt.9/10.10.1996 as token of initiation of Minor penalty finally dismissed the workman from the services of the Company inflicting punishment of major penalty on 22.07.1997.In March 1997 the concerned workman returned to the colliery with a Medical Certificate from an M.B.B.S. Doctor of his area showing proof of the treatment he remained under but contrary to it the workman concerned was handed out a Notice for appearance before the Enquiry Officer –cum-Sr. P.O. of the Colliery with the advice to attend the Enquiry just merely for a formality and thereafter let him join regular duty .The ailment to which the workman was suffering on alleged unauthorized absentism, was nothing else but "Jauncdice". As the absence was beyond of the control over the workman he had little choice to do away with no willful evasion, as the impression was left over . The workman was illiterate and completely ignorant of facing the Enquiry Officer so whatever little knowledge he had, did to the best of his capability in good faith without taking assistance of his co-worker. The workman never advised earlier for the option over engaging co-worker in assistance of the Enquiry .During the enquiry proceedings willful absence and disobedience was not proved by the Enquiry Officer during the Enquiry proceedings nor even a single document/paper was produced which could be marked as Ext. to confirm the fact .Ironically the workman concerned was dismissed from the service of Simlabahal Colliery under the Management of M/s BCCL vide order dt.22.7.1997 Since workers are worst hit of all, though there is absolute unanimity on the move doubting dismissal being beneficial in the long run to Industrial Relations so the dismissal for committing petty misconduct had shockingly a serious blow and disproportionate and excessively harsh. By making this W/Petition the workman want to establish that he is entitled to get lesser punishment than the order of the dismissal which has been passed in the instant case caused tremendous sufferings and threw the workman and his family on the verge of starvation that amounts to capital punishment in service arena for petty misconduct. So the alleged action of the dismissal is unlawful unfair and unjustified and thus, is liable to be set aside with reinstatement with all consequential benefits , as stated in WS.

Whereas the issuance of the charge sheet was wrong and ill-motivated and dealt a severe blow with an eye to punish the workman .As such the so called enquiry proceeding which resulted on the Enquiry Officer's report stands vitiated itself and in no way, can be termed as fair and proper. Ultimately the workman concerned was dismissed

from the service of the Company vide order dt.22.7.1997 of M/s BCCL to which the workman concerned cried it foul as his misconduct was not proved.

3 Against it, the OP/Management has desperately proved failure to come out to file WS to counter the charges brought against it by the Sponsoring Union despite issuance of fresh notice and numerous adjournments having availed over the issue by the OP/Management. Neither Ld. Counsel nor any Representative took step for appearance and filing the much awaited WS cum rejoinder since its inception rather they had all along maintained deep rooted silence thereby dropping sufficient hints that they absolutely did not have anything to say nor did have objection to the way the case is set to be rolling

No wonder Group of the Collieries under the Management of M/s BCCL, a part of the Coal India Ltd. cases like this grab headlines since past couple of years where numerous cases on same ground might have been pouring in slowly but steadily and matter gets more complicated when the labour forces are involved .It serves as a stark reminder of the sorry state of affairs of the system fabricated all around the Managements of the collieries. The workmen mostly hailing to illiteracy back ground are usually scared of stepping into the underground Mines due to safety hazards and unhygienic atmosphere prevailing in the vicinity of the collieries at large, surrendering in and around the site despite best of safety mechanism/technique in place; however safety related issues have never carved out a permanent niche in the hearts of workers. Workers of the colliery have early adopted safety norms and other safety platforms since they are simple, clean and accurate. Governments too have made every effort to stem usage of safety norms of latest technology in collaboration with their leading Institutions in a bid to facilitate accident free zone and thwart accident or mishap of any kind. .The prevailing culture of apathy that gives the situation to turn into a fatal accident in the absence of stringent deterrents tells all something else.

There is nothing adverse report against the workman barring this one. Though alleged absentism had cost him employment. The punishment of dismissal inflicted upon the workman concerned to his alleged misconduct under the name of penalty on ground of absentism appears to be disproportionate and a harsher to bear, for survival .

5. As far as imposition of penalty as dismissal from service is concerned, having regards to the developments post- dismissal leading to the workman sufferings , and taking into consideration of the his apologetic stand, we are of the view that the workman concerned who lost bread and butter in the days of hardship be provided one more last opportunity by offering him fresh appointment in the lowest Grade with two- year probation subject to verification of his age from the Statutory Record of the Form B Register . Therefore it is ordered that the worker concerned be appointed as fresher in the lowest Cat-I with two-year period on probation only on verification of his age. As for back wages, it does not arise at all.

R. K. SARAN, Presiding Officer

नई दिल्ली, 1 फरवरी, 2018

का.आ. 245.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2 धनबाद के पंचाट (संदर्भ संख्या 85/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/1/2018 को प्राप्त हुआ था।

[सं. एल-20012/113/2015-आई.आर. (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 1st February, 2018

S.O. 245.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby published the award of the Central Government Industrial Tribunal-cum-Labour Court No.-2, Dhanbad (Ref. No. 85 of 2015) as shown in the Annexure in the Industrial Disputes between the empliyers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 18.01.2018.

[No. L-20012/113/2015-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri R.K. Saran**,** Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D.Act., 1947

REFERENCE NO. 85 OF 2015

PARTIES: : The Secretary

Jharkhnd Janta Mazdoor Union,

Vishwakarma Colony, Nutundih

PO: Jagjivan Nagar, Dhanbad. 826003

Vs.

The General Manager,

Govindpur Area of M/s BCCL
PO: Sonardih,Dhabad 828125

L-20012/113/2015-IR (CM-I) dt 09.10.2015

APPEARANCES :

On behalf of the workman/Union : Mr. P. Mandal, Ld. Rep.

On behalf of the Management : Mr. D.K.Verma Ld. Adv.

.

State : Jharkhand Industry Coal

dated, Dhanbad, the 12th Dec., 2017

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. **L-20012/113/2015-IR (CM-I) dt.09.10.2015.**

SCHEDULE

"Whether the action of the Management of Kharkharee Colliery under Govindpur Area of BCCL in dismissing Sri Kaleshwar Hansda, Ex-Trammer from the service w.e.f. 07.08.2014 is fair and justified? To what relief the concerned workman is entitled to?"

On receipt of the Order No. **L-20012/113/2015-IR (CM-I) dt.09.10.2015** of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 85 of 2015 was registered on 26.10.2015 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned, and contested the case.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union/Petitioner and the O.P./Management through their own Ld. Rep. /Counsel respectively appeared and contested the case to the extent it stands reserved for Award.

2. Here is another Reference case of dismissal from services of the Company of Shri Kaleshwar Hansda ,Ex-Trammer bearing Personnel No. 02450229 was posted at Kharkharee Colliery under Govindpur Area of M/s BCCL.He had been successfully keeping unblemished and spotless service career till the workman had abruptly fallen sick on 26.07.2011 and found himself unable to work, accordingly informed the Management of the fact .After recovery from said illness , the workman concerned approached the Management with Medical Certificate to allow him for resumption of duty but he was flatly denied by the Management in doing so rather he was handed out a charge sheet on 03.08.2001 which contains a misconduct over absentism .The Workman/Petitioner contends that he had good reason for his absence from duty being his ill health which the Management did not consider .By constituting an enquiry the petitioner was not given the chance before the Enquiry Officer ,thus depriving the workman the opportunity to defend himself by explaining before enquiry of the bare actual facts, virtually an utter violation of principle of natural justice on the part of the Management ,as claimed by the Workman in his WS. The petitioner contends that the charge sheet was issued primarily to deal with the absence taking minor punishment to which the

concerned workman replied promptly without knowing whether the charges sheet contains all relevant facts which constitutes a particular misconduct. Over all the contention of the workman as never taken into consideration either by Enquiry Officer or Disciplinary Authority .Moreover the charges was not specific.

Finally the Agent /Project Officer of Kharkharee Colliery of M/s BCCL by a dismissal order dt. 07.08.2014 illegally dismissed the workman from the service of the Company, a decision that had been arrived at by not filling a procedure which could not be termed a fair and in consonance with the principle of natural justice. The workman, as matter of fact, fairy admitted of his illness and explained the reason for his absence by stating that he did not have any intention or desire to disobey the order of higher Authority but the reason was purely personal and beyond the control. Post dismissal the workman made a fervent mercy appeal before Appellate Authority so as to dispose of the appeal in accordance with provisions of Certified Standing Order but to no avail .Petitioner submits that the punishment of dismissal imposed on the workman is disproportionate to the charge he was alleged to have committed thereby attracting itself a serious violation of the under clause 30 under the provisions of Certified Standing Order The workman had not committed misconduct nor was he proved guilty in so called enquiry. Thus the act of dissimilar is unlawful, unfair and unjustified and this is liable to be set aside with reinstatement with full back wages as stated in WS by the workman.

3. Whereas denying all the allegations emphatically brought in by the Sponsoring Union/petitioner, the Management raised question mark over maintainability of Industrial Dispute either in law and facts as neither the Sponsoring Union has got no locus standi to raise industrial dispute u/s 2(k) of the I.D. Act. On that score the Reference does not qualify to stand as Industrial Dispute rather is liable to be rejected summarily. Workman Shri Kaleshwar Hansda had been absenting from his duty w.e.f. 26.07.2011 without information and permission of the Management .As such he had committed a grave misconduct according to clause 26.1.1. of the Certified Standing Order for which he was framed charge sheeted dt. 03.08.2011 which did not fetch any reply on the part of the workman .The Management again issued another letter on 26.12.2012/04.01.2013 whereby asking him to report for duty and submit the reply of the said charge sheet despite this the workman preferred keeping mum to reply or report for duty .Then again the Management repeating the same thing asked the workman on 28.06.2013 with suitable direction to report for duty and submit reply of the charge-sheet but this the workman had been proved also failure to come out with compliance of the order .On 12.02.2014 the Management issued another letter with a direction to report duty and submit reply of the charge sheet, but this time to the workman did not comply with the order and thus it led to formation of the enquiry under the Enquiry Officer in the absence of finding no alternative to conduct the enquiry in accordance with principle of natural justice and, to ascertain to the extent the workman committed misconduct ,and offer ample opportunity to the charge sheeted workman to defend himself in his personal appearance .The Enquiry Officer conducted the enquiry and found the workman guilty of the charges brought against him .The Management then issued 2nd Show Cause Notice to the workman concerned to which the workman was proved failure in explaining his position of unauthorized absence explicitly nor was the reply satisfactory. Thus the Management finally dismissed the workman vide letter dated 07.08.2014 for his proved misconduct

It is an extreme example of gross negligence on the part of the workman who later on turned habitual absentee that got rooted leading to his dismissal from service. Thus, neither there was any sort of violation of the principle of natural justice, nor did it get mired at any stage as alleged by the petitioner/Union rather the alleged action of dismissal against the workman stands as fair, legal and justified. So long as fairness of the enquiry, if not convinced, the Management stands committed to adducing evidence afresh.

There is nothing adverse report against the workman concerned. Undeniably the alleged absentism had cost him employment, the only source of income. The punishment of dismissal imposed on the workman against his misconduct on absentism ground shielding under the name of penalty appears not proportionate to the charge of misconduct the workman committed. And what needs above all, easing out strain in Industrial relation

4. It is pertinent to mention that in relation to Group of the Collieries under the Management of M/s BCCL, a part of the Coal India Ltd, cases like absentism hardly get significant where numerous cases on same footing might have been pouring in slowly but steadily and the matter never gets more complicated when the labour forces are involved .Moreover this is not a case of day one or two and has turned a regular feature for the years together because they are sometimes subjected to work beyond safety norms. The surprise removal of the work force to a considerable numbers dealt a severe blow to the sector, a large part of which constitutes production-oriented, which hampers largely.

5. The workman concerned who was stripped of his livelihood, needs a little breather to meet the ends of justice, be provided one more opportunity by offering him fresh appointment in the lowest Grade with two- year probation. Therefore it is ordered that the worker concerned be appointed as fresher in the lowest Cat-I with two-year period on probation since he joins the service. As for as the back wages is concerned, it does not arise at all.

R. K. SARAN, Presiding Officer

नई दिल्ली 2 फरवरी, 2018

का.आ. 246.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वैशाली क्षेत्रीय ग्रामीण बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, धनबाद के पंचाट (संदर्भ संख्या 172/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/02/2018 प्राप्त हुआ था।

[सं. एल-12011/33/1999-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 2nd February, 2018

S.O. 246.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 172/1999) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Vaishali Keshetriva Gramin Bank and their workmen, received by the Central Government on 02/02/2018.

[No. L-12011/33/1999-IR(B-1)]

B.S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), AT DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act. 1947

Reference : No. 172/1999

Employer in relation to the management of Vaishali Kshetriya Gramin Bank, Muzaffarpur

AND

Their Workman

Present : Shri R. K. Saran, Presiding Officer

Appearances :

For the Employers : Shri R. Ranjan Prasad, Advocate

For the workman : None

State : Jharkhand Industry-Banking

Dated : 20/12/2017

AWARD

By order No. L-12011/33/1999-IR(B-I) dated 21/22.10.1999 the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

''Whether the action of the management of vaishali Keshetriya Gramin Bank, Muzaffarpur, transferring the president and the secretary of the vaishali keshetriya Gramin Bank workers/Officers organization, Muzaffarpur and the protected workman, to remote places where theycannot run the activities of the activities of their union smoothlyare justified? If not, what relief theyare entitled for?

2. Whether the action of the management of vaishali keshetriya Gramin Bank, Muzaffarpur in not providing full salary to Sri G.C. Tiwari, Clerk for his suspension period, without issuing any chargesheet or without conducting any enquiry is justified? If not, what relief the workman is entitled for?''

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workman, none appears subsequently. Case remains pending. It is felt that disputes between the parties have been resolved in the mentime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 2 फरवरी, 2018

का. आ. 247.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 63/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.02.2018 को प्राप्त हुआ था।

[सं. एल–12012/66/2013- आई आर (बी–1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, 2nd February, 2018

S.O. 247.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.63/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Nagpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 02.02.2018.

[No. L-12012/66/2013–IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/63/2013 Date: 27.12.2014.

Party No.1 : The Regional Manager, Region-II
State Bank of India,
Vijit Sales, Bapat Nagar Road,
Nagpur Road, Chandrapur.

Versus

Party No.2 : Shri Narendra Vitthalrao Tarsekar,
Juni Mangalwari,
Near Bhujade's House,
Chandrashekar Azad Chowk,
Nagpur- 440 008.

AWARD

(Dated: 27th December, 2017)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of State Bank of India and their workman, Shri Narandra Tarsekar, for adjudication, as per letter **No.L-12012/66/2013-IR (B-I) dated 14.10.2013,** with the following schedule:-

> **"Whether the action of the management of State Bank of india, Zonal Office, Region-II Nagpur in awarding punishment of removal from service to Shri Narendra Vitthal Tarsekar, ex-employee is legal and justified? If so, whether workman is entitled to reinstatement in service of Bank with back wages?"**

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Narendra Tarsekar, (''the workman" in short), filed the statement of claim and the management of State Bank of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was a workman as per section 2(s) of the Act and the party No.1 is an industry within the meaning of section 2(j) of the Act and is a statutory bank and the

service conditions of the employees of party No.1 are governed by the provisions of the Sastry Award, Desai Award and the various bi-partite settlements arrived at industry level between the trade Unions and Indian Banks Associations.

It is further pleaded by the workman that after going through the due process of selection, he was appointed as a clerk at Chandrapur Main branch of party No.1, vide appointment order dated 05.01.2009 and initially he was kept on probation, for a period of six months and after satisfactory completion of the said period, he was confirmed in the service w.e.f. 09.07.2009 and his service record was outstanding and was appreciated by the higher authorities and the party No.1 called for his explanation vide order dated 11.10.2011 and he submitted his reply to the same on 04.11.2011 and the Regional Manager, Region-Ii issued the charge sheet dated 22.11.2011 under clause 5(m) of the Bi-partite settlement on the allegation that he failed to mention about the police case pending against him in the bio-data at the time of his appointment in the bank and he submitted his reply to the said charge sheet, denying the charge levelled against him and a departmental enquiry was conducted and one Shri Bhaskar Patil, Branch Manager , Jatpura branch was appointed as the Enquiry Officer and the Enquiry officer conducted the departmental enquiry against him and submitted his report dated 19.06.2012 to the Disciplinary Authority, declaring the charge to have been proved against him and the Disciplinary authority vide order dated 25.08.2012, awarded the punishment of removal from service against him and he was removed from service w.e.f. 31.08.2012 and he preferred an appeal before the Appellate Authority against the order of punishment on 03.11.2012, but his appeal was dismissed by the Appellate Authority vide order dated 04.12.2012.

The further case of the workman is that the departmental enquiry conducted against him is not legal, proper and fair and the Enquiry Officer while conducting the enquiry failed to follow the principles of natural justice and as such, the enquiry held against him is liable to be quashed and set aside and he was not granted reasonable opportunity for submitting the documents on record and the Enquiry Officer had wrongly, recorded the findings that he had admitted the omission and the entire approach of the Enquiry Officer is biased and the manner in which the Enquiry Officer proceeded with the enquiry is sufficient to demonstrate that the Enquiry Officer acted as a puppet of the management and the Enquiry Officer proceeded with the enquiry against him with biased and prejudiced mind, with the sole aim of satisfying the management and it is the settled principles of law that rules of evidence Act are not applicable to departmental proceedings, but management was duty bound to prove the documents filed on record, by examining witness and in absence of proof of the documents, the same should not have been exhibited by the Enquiry Officer and taken into consideration and the enquiry held against him is liable to be quashed and set aside.

The workman has also pleaded that at no point of time, he had any intention to hide any information much less the information sought vide clause 19 of the "Form", by the Bank and mere perusal of the said "form", it can be found that the word "pending" has not been mentioned in clause 19 of the same and he carried a bona fide impression that the information sought by clause 19 pertained to any case decided by the court of law and as he was not convicted in any court of law, he had rightly stated "No'' against clause 19 and there was no intentional suppression of any fact by him, while submitting the "Form'' and failure of the Enquiry Officer to take note of the said aspect in its proper perspective has rendered the enquiry illegal and the submission of the charge sheet against him under the Bi-partite settlement itself is illegal , as at the time of submission of the "Form" in question, there was no employer and employee relationship between the Part No.1 and himself and the Enquiry Officer did not handover the copies of the daily order sheets to him, which cause grate prejudiced to him in defending the charges and he was not given the opportunity to adduce evidence in his defence by the Enquiry Officer, in violation of the principles of natural justice and the punishment of removal from service passed against him is shockingly disproportionate and the same is liable to be set aside and the report submitted by the Enquiry Officer is a quite perverse report and after his termination from service, he has not been gainfully employed.

The workman has prayed for his reinstatement in service with continuity, full back wages and all other consequential benefits.

3. The party No.1 in the written statement, after denying all the adverse allegations made in the statement of claim, has pleaded inter alia that the workman joined at its main branch, Chandrapur on 09.01.2009 as an assistant (Accounts and Cash) on the basis of the appointment order dated 05.01.2009 and one of the terms mentioned in his appointment letter was that the appointment would be confirmed only on receipt of satisfactory police verification report, otherwise, the appointment would be terminated without assigning any reason and one of the other terms mentioned in the appointment letter was that in the event of detection of any declarations, certificates and testimonies being found incorrect/false or any of the facts found to have been concealed, at a later date or suppressed any material facts, the appointment would be deemed invalid ab-initio and as police verification report of the workman was not received by it within six months, on completion of the probationary period, the workman was confirmed in service by it w.e.f. 20.07.2009, with the condition that it reserves the right to terminate the services without any notice, in case of receipt of any adverse police verification report against him and after a gap of two years, police submitted the verification report of the workman intimating that one case bearing No.3248/2006 under section 12 of the Bombay betting Act, have been registered against the workman at Lakadganj police station and that the said case is subjudised in the court.

It is further pleaded by party No.1 that the workman while submitting his bio-data at the time of appointment in the bank, intentionally did not disclose the fact of pendency of the police case against him and the workman had given the undertaking that in case the particulars furnished by him would be found to be false or not true and/or suppression of material fact would be revealed at a later date, his services would be liable to be terminated and even though, the workman was very much aware of the pendency of the police case against him, he did not disclose about the same to the bank and the workman himself had admitted in his communications and the affidavit that he was arrested by the police and later on was released on bail and after receipt of the police verification report, a memorandum dated 29.10.2011 was issued by it to the workman and the workman submitted his reply to the same on 04.11.2011, admitting about his detention by the police and begging apology and requesting to take lenient view and as the explanation given by the workman was found not to be satisfactory, it was decided to initiate the departmental enquiry against him and the workman was charge sheeted by the disciplinary Authority and the workman received the charge sheet dated 22.11.2011 on 28.11.2011 and he submitted his reply to the said charge sheet on 01.12.2011 and the Disciplinary authority found the reply of the workman to be unsatisfactory and decided to continue with the departmental enquiry and the departmental enquiry was conducted by the Enquiry Officer on 27.03.2012, 15.05.2012, 18.05.2012 and 24.05.2012, giving ample scope to the workman to defend his case and the workman attended the departmental enquiry with his defence representative, Shri Sunil Jamadar and he was provided with all the documents relied upon by the Bank and the genuineness of the documents was admitted by the workman and the workman was given the chance to examine and cross-examine the witnesses and also for production of documents and though the workman sought time for production of documents, he did not file any document before the Enquiry Officer and he was given the copy of the enquiry proceedings on each and every date of the enquiry and after conducting the enquiry fairly and properly, the Enquiry Officer submitted his report to the disciplinary authority, holding the charge levelled against the workman to have been proved.

It is also pleaded by the party No.1 that the Disciplinary authority issued show cause notice dated 18.07.2012 along with the copy of the enquiry report to the workman, proposing the punishment of "Discharge from bank service with superannuation benefits' and the workman submitted his reply to the said show-cause notice and he was given personal hearing by the disciplinary authority on 04.08.2012 and the disciplinary Authority after going through the entire case record independently and taking into consideration the submissions made by the workman during personal hearing, came to the conclusion that the charge levelled against the workman has been proved and accordingly imposed the punishment of removal from service with superannuation benefits on 25.08.2012 and the workman preferred an appeal against the order of punishment and the appeal was dismissed by the Appellate Authority by order dated 04.12.2012.

The further case of party No.1 is that the departmental enquiry was conducted against the workman by observing the principles of natural justice and the enquiry officer has given justifiable reasons in support of his findings and the punishment imposed against the workman is justified and the workman is not entitled to any relief.

4. No rejoinder has been filed by the workman.

5. As this is a case of the removal of the workman from service as a punishment in the departmental enquiry held against him, the fairness or otherwise of the departmental enquiry has been taken up for consideration as a preliminary issue and by order dated 27.01.2015, the departmental enquiry conducted against the workman was held to be illegal, improper and not in accordance with the principles of natural justice.

6. Now we see the legal position:- Management's advocate to support his argument put following case laws :--

State Bank of Bikaner and Jaipur Vs Nemichand, Civil Appeal No. 5861 of 2007, SC dated 01.03.2011, Regional Manager, U.P.S.R.T.C. Vs Hotilal, Civil Appeal No. 5984 of 2000 dated 11.02.2003, State Bank of India Vs Ramesh Dinkar, Civil Appeal No. 2055 of 2003 dated 11.08.2006, Devendra Kumar Vs State of Uttaranchal, Civil Appeal No. 1155 of 2006 dated 29.07.2013 and Bharat Forge Company Ltd. Vs A.B. Zodge, A.I.R. 1996 SC 1556, in which following legal principles are laid down:-

i. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record.

ii. Therefore, courts will not interfere with findings of fact recorded in departmental enquires, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a Tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, malafide or based on extraneous considerations.

iii. When a court is considering whether punishment of 'termination from service' imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor.

iv. That having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment.

v. Legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct.

vi The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority.

vii. Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking.

viii. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands.

ix. A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt.

x. Misrepresentation itself amounts to fraud, and further held fraudulent misrepresentation is called deceit and consists in lending a man into damage by willfully or recklessly causing him to believe and act on falsehood.

xi. In State of Haryana & Ors. Vs. Dinesh Kumar, AIR 2008 SC 1083, this court held that there has to be a deliberate and willful misrepresentation and in case the applicant was not aware of his involvement in any criminal case or pendency of any criminal prosecution against him, the situation would be different.

xii. The candidate is not supposed to furnish information which is not specifically required in as case where information sought dealt with prior convictions by a criminal court. The candidate answered it in the negative; the court held that it would not amount to misrepresentation merely because on the date a criminal case was pending against him. The question specifically required information only about prior convictions.

xiii. The appellant suppressed material information sought by the employer as to whether he had ever been involved in a criminal case. Suppression of material information sought by the employer or furnishing false information itself amounts to moral turpitude and is separate and distinct from the involvement in a criminal case.

xiv. The individual is required to furnish information about criminal antecedents of the new appointees and if the incumbent is found to have made a false statement in this regard, he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority.

xv. If the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same.

7. Now we come to the argument presented by the workman with legal evidence. On behalf of the workman, it was argued that, in the departmental enquiry, principles of natural justice were not followed, reasonable opportunities to defend were not also given and Enquiry Officer has acted like puppet of management but workman in cross-examination, admitted that he did not have any enmity with the Enquiry Officer prior to the departmental enquiry and he had no bias against me. He also admitted that, he attended the departmental enquiry from beginning to the end along with representative, Shri Sunil Jamdar.

On this ground, my predecessor held on 27.01.2015 that, the departmental enquiry held against the workman was legal, proper and in accordance with the principles of natural justice.

8. On behalf of the workman, it was argued in his written notes of argument that, "Party No. 2 bonafidely not mentioning regarding the gambling incident and also argued that Enquiry Officer did not appreciate all the aspects in its proper perspective. On perusal of the record, it is found that; workman admitted that, he had submitted the reply of second show-cause notice, he received the order of punishment on 31.08.2012 and filed an appeal before the Appellate Authority, which was decided, he also admitted that, neither in his reply to the second show-cause notice nor his appeal, he did not mention that, copy of the departmental enquiry was not given to him.

9. On the perusal of the document filed by management but not denied by the workman, it appears that the workman caught red handed by police on 15.08.2006 and same day; he was arrested and bails out by the police. It is also appeared that, case is registered against the workman on the same day and challan was filed on 25.08.2006 and he

applied in the bank on 14.10.2008 and he was appointed in bank services on 05.01.2009. Police verification report on 08.01.2012. It indicates that he had knowledge of the gambling case on 15.08.2006, when he was arrested by the police. So, my humble opinion is that, it is not correct to say that, he bonafidely not mentioned this fact in application bio-data.

10. On the perusal of the document filed by management but not denied by the workman, it appears that departmental enquiry was started from 27.03.2012 and concluded on 24.05.2012 and it also appears that, no oral evidence was taken place. Workman in his court evidence also admitted that, in departmental enquiry, management did not examine any witness, but management filed documents in his presence. In the departmental enquiry, he examined himself as a witness but he did not produce any document or other witnesses.

11. In the case law, A.P.S.R.T. Corporation Vs G. Murali, 2017 LLR 1233 held that, "Statement recorded by the TTI from the passengers cannot be taken in evidence, as no opportunity was given respondent to cross-examine".

In the case, of hand, documents were produced by the bank in the departmental enquiry but these are not admitted by the workman but these documents were not proved by oral evidence and an opportunity of cross-examination was also not given to the workman. In my humble opinion, in legal sense, all these documents are technically not proved in the departmental enquiry, but in this court proceedings, court directed to both parties to produce the documents on 05.12.2017. Management filed some of these documents but workman not filed any document or contradicts these documents. After all these documents are based on translation of certified copies, which appear to be genuine in my opinion. So, that is the fact in departmental enquiry, but the workman filed the judgment of Judicial Magistrate, First Class dated 18.09.2012, which is based on all these police proceedings.

12. On behalf of the workman, it was argued in his written notes of argument that he was appointed as Assistant (Accounts & Cash) and Enquiry Officer did not take all these aspects of his back service record. He also argued that, criminal case u/s 12; Bombay Betting Act was tried wrongly. He also argued that, he is out of employment not in any gainful employment. On the contrary, management denied this argument in the light of principles laid down of the above case laws.

13. It is also laid down in above case law that, Disciplinary Authority and Appellant Authority being the fact finding authority, this Tribunal is not Appellate Authority. It is also held that, Tribunal will only play secondary role, while the primary judgment as to reasonableness will remain with the executive of administrative authority. In this case, workman was given an opportunity to reply and argument before Enquiry Officer, Punishment Officer and Appellate Authority. So, it shows that he had sufficient opportunities to present his case.

14. In the above case laws, it is also held that disciplinary proceedings is not a criminal trial, so, standard of proof is that of preponderance of probability, so, acquittal by criminal court does not mean that, no such type of gambling incident had happened.

15. In the above case laws, it is also held that "Withholding such material information or making false representation itself amount to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case…..The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation" (Vide: Union of India Vs Maj. Gen. Madan Lal Yadav, AIR 1996 SC 1340 and Lily Thomas Vs. Union of India & Ors, AIR 2000 SC 1650).

16. In above case laws, it is also held that "A domestic enquiry may be vitiated either for non-compliance or rules of natural justice or for perversity….The right of the employer to adduce evidence in both the situations is well-recognized"

In case law Delhi Transport Corp. vs. Ombir Singh 2017 LLR 252, Hon'ble Lordship held that "Where principles of natural justice are not being complied with, then in such cases, compensation ought to be granted even if termination of service is found to be valid". On the basis of principle laid down in Engineering Laghu Udhyog Employees Union vs Judge, Labour Court and Industrial Tribunal & others – (2003) 12 SCC 1 in which it was held that:- "no difference whether the matter comes before the tribunal for approval under S.33 or on a reference under S.10 of the Industrial Dispute Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper." "A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper." The employer, thus, has got a right to adduce evidence before the Tribunal justifying its action, even where no domestic inquiry whatsoever has been held.

It will be open to the Tribunal to pay compensation even in a case where ultimate charges are proved, despite holding that the order of termination is valid for the reason that principles of natural justice have not complied with.

Judging the present case in hand with the touch stone of the principles as mentioned above, it is found that law is well settled that where principles of natural justice were not complied with, then in such cases compensation ought to be granted because termination of the services in my opinion is valid.

17. In view of the discussion made above and the materials on record, it is found that there is no scope to interfere with the order of the punishment of dismissal from services passed against the workman. Hence, it is ordered:-

ORDER

The action of the management of State Bank of India, Zonal Office, Region-II, Nagpur in awarding punishment of Removal from service to Shri Narendra Vitthal Tarsekar, ex-employee is legal and justified, but due to lack of procedure in departmental enquiry, the workman is entitled for lumpsum compensation of Rs. 75,000/- (Rupees seventy five thousand only) from party No. 1 in lieu of reinstatement, which is payable within one month from the publication of this award in official gazette, failing which, the amount due to the workman will carry interest of 6% per annum from the date of due to the workman to the date of actual payment of the amount to the workman. The workman is not entitled for any other relief.

SHYAM SUNDAR GARG, Presiding Officer

नई दिल्ली, 2 फरवरी, 2018

का आ. 248.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय रिजर्व बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या **22/2013-2014**) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/02/2018 को प्राप्त हुआ था।

[सं. एल-12011/79/2012- आई आर. (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 2nd February, 2018

S.O. 248.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22*/2013-2014)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur* as shown in the Annexure, in the industrial dispute between the management of Reserve Bank of India and their workmen, received by the Central Government on *02.02.2018.*

[No. L-12011/79/2012– IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

Case No. CGIT/NGP/22/2013-14

Representative for the parties are present.

Call on 13.10.17 for further order.

Representtative for the parties are present.

Representative for the Management files reply stating therein that they have no objection for withdrawal of the present reference.

Hence, call on 03.11.17 for further order

Party No.1 : The Chief General Manager,
Reserve Bank of India,(HRMD)
Central Office, Mumbai-1
The Regional Director,
Reserve Bank of India,
Civil Lines, Nagpur-440001

V/s

Party No. 2 : The President,
Reserve Bank Employees
Association, C/o. Radhika,
34- Pandit Malviya Nagar, Nagpur-440025

ORDER

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute for adjudication between the management of (The Chief General Manager, HRMD Reserve Bank of India and the President, Reserve Bank Employees Association) vide letter **No.L-12011/79/2012-IR(B-I) dated 13.05.2013,** on the following schedule:-

"Whether the action of the management of the Reserve Bank of India through its Chief General Manager, HRMD, Central Office, Mumbai & the Regional Director, RBI, Nagpur in not substituting the word "Promotion" to the word "up-grading" wherever appearing in the Settlement dtd. 05th October, 2005 signed between the management of Reserve Bank of India and All India Reserve Bank Employee's Association on Assured Promotion for class.III employees from Group "A" to Group "D", is legal and justified? If not, to what relied the Reserve Bank Employees Association is entitled to?"

2. On receipt of the reference, notices were issued to parties to file claim, and written statement and accordingly the petitioner filed its Statement of claim, rejoinder and affidavit and the party No. 2 filed its written statement.

Today Advocate Ku. Kalpana Pathak present on behalf of the petitioner.

Management Representative, Shri K.K. Bhagat also present on behalf of the Party No. 2.

Party No. 2 filed an application to withdraw the present reference because their promotions are settled between both parties. So party No. 2 does not want to prosecute present/reference, so he pray for withdraw the present matter/reference. He files a pursis and affidavit on dated 20.01.2015.

Management on reply of this application gave their consent to withdraw the reference. Both parties are agreed on the point of Hon'ble Supreme Court judgment vide Civil Appeal No. 5286-87 of 2005 (annexure-A) and memorandum settlement dated 05.10.2005 (annexure-C). So both parties are agreed to withdraw the reference / matter.

So, the application for withdrawal of reference is allowed. Hence, it is ordered:-

ORDER

The application for withdrawal of the case is allowed. The case is treated as withdrawn. The application filed by the Party No. 2 for withdrawal of the case is made part of the order. The reference is answered in the negative. The petitioner is not entitled to any relief.

S. S. GARG, Presiding Officer

BEFORE THE HON'BLE CENTRAL GOVERNMENT-CUM-INDUSTRIAL TRIBUNAL, NAGPUR
REFERENCE CASE NUMBER CGIT/NGP/22/2013-2014

PARTY No. 1 : The Chief General Manager, Reserve Bank of India, Human Resources Management Department, (HRMD), Central Office, Mumbai-40001 and 1 other.

VERSUS

PARTY No. 2 : President, Reserve Bank Employees Association, C/O Radhika, 34, Pandit Malviya Nagar, Khamla, Nagpur-25

APPLICATION ON BEHALF OF PARTY NO. 2 FOR PERMISSION TO WITHDRAW THE PRESENT REFERENCE

The Party No. 2 most humbly and respectfully submits as under :-

The present reference pertains to Removal of ward ''Promotion'' from Group ''D'' settlement and also other relief's. The matter is fixed for evidence of the parties. The Party No. 2 does not want to prosecute the present matter/Reference. The Party No. 2 wants to withdraw the present matter/Reference. In view of this, the Party No. 2 may be permitted to withdraw the present matter/reference in the interest of justice.

PRAYER : It is therefore most humbly and respectfully prayed that, the Party No. 2 may be permitted to withdraw the present matter/ reference in the interest of justice.

NAGPUR

Dated : 22.6.2017

Sd./-

PARTY No. 2

K. G. SONWANE

C.F. PARTY NO. 2

Adv. S. A. PATHAK

नई दिल्ली, 2 फरवरी, 2018

का आ. 249.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय रिजर्व बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट संदर्भ संख्या (24/2013-2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.02.2018 को प्राप्त हुआ था।

[सं. एल-12011/80/2012-आई आर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 2nd February, 2018

S.O. 249.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24*/2013-2014)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Nagpur as shown in the Annexure, in the industrial dispute between the management of Reserve Bank of India and their workmen, received by the Central Government on *02.02.2018.*

[No. L-12011/80/2012– IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

Case No. CGIT/NGP/24/2013-14 **Date: 03.11.2017**

Party No.1 : The Chief General Manager,
Reserve Bank of India,(HRMD)
Central Office, Mumbai-1

V/s

Party No.2 : The President,
Reserve Bank Employees Association, C/o. Radhika,
34- Pandit Malviya Nagar, Nagpur-440025.

ORDER

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute for adjudication between the management of (The Chief General Manager, HRMD Reserve Bank of India and the President, Reserve Bank Employees Association) vide letter **No. L-12011/80/2012-IR(B-I) dated 02.05.2013,** on the following schedule:-

"Whether the action of the management of the Reserve Bank of India Mumbai through its Chief General Manager, is justified that the modified clauses 1, 2 & 5 of the Settlement would be effective from January 1, 2009 instead of 05.10.2005 and whether the concerned employees are eligible to receive all consequential benefits and arrears in pay w.e.f. 05.10.2005 or not? If not, to what relief the concerned employees are entitled to?"

2. On receipt of the reference, notices were issued to parties to file claim, and written statement and accordingly the petitioner filed its Statement of claim, rejoinder and affidavit and the party No. 2 filed its written statement.

Today Advocate Ku. Kalpana Pathak present on behalf of the petitioner.

Management Representative, Shri K.K. Bhagat also present on behalf of the Party No. 2.

Party No. 2 filed an application to withdraw the present reference because their issues are settled between both parties. So party No. 2 does not want to prosecute present/reference, so he pray for withdraw the present matter/reference. He files a pursis and affidavit on dated 20.01.2015.

Management on reply of this application gave their consent to withdraw the reference. Both parties are agreed on the point of Hon'ble Supreme court judgment vide Civil Appeal No. 5286-87 of 2005 (annexure-A) and memorandum settlement dated 05.10.2005 (annexure-C). So both parties are agreed to withdraw the reference /matter.

So, the application for withdrawal of reference is allowed. Hence, it is ordered:-

ORDER

The application for withdrawal of the case is allowed. The case is treated as withdrawn. The application filed by the Party No. 2 for withdrawal of the case is made part of the order. The reference is answered in the negative. The petitioner is not entitled to any relief.

S. S. GARG, Presiding Officer

ANNEXURE

BEFORE THE HON'BLE CENTRAL GOVERNMENT-CUM-INDUSTRIAL TRIBUNAL, NAGPUR

REFERENCE CASE NUMBER CGIT/NGP/24/2013-2014

PARTY NO. 1 : The Chief General Manager. Reserve Bank of India, Human Resources Management Department, (HRMD), Central Office, Mumbai-40001 and 1 other.

VERSUS

PARTY NO. 2 : President, Reserve Bank Employees Association, C/O Radhika, 34, Pandit Malviya Nagar, Khamla, Nagpur-25

APPLICATION ON BEHALF OF PARTYNO. 2 FOR PERMISSION TO WITHDRAW THE PRESENT REFERENCE

The Party No. 2 most humblyand respectifully submits as under :-

The present reference pertains to issuance of directions to the Party No. 1 to give every consequential benefit and arrears in pay w.e.f. 5/10/2005 to all concerned employees and also other reliefs. The matter is fixed for evidence of the parties. The Party No. 2 does not want to prosecute the present matter/Reference. The Party No. 2 wants to withdraw the present matter/Reference. In view of this, the Party No. 2 may be permitted to withdraw the present matter/reference in the interest of justice.

PRAYER : It is therefore most humbly and respectifully prayed that, the Party No. 2 may be permitted to withdraw the present matter/reference in the interest of justice.

NAGPUR

Dated : 22.6.2017

Sd./-

PARTY NO. 2

K. G. SONWANE

C. F. PARTY NO. 2

Adv. S. A. PATHAK

नई दिल्ली, 2 फरवरी, 2018

का. आ. 250.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **इंडसइंड बैंक लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं 1. दिल्ली के पंचाट (संदर्भ संख्या **166/2017**) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.02.2018 को प्राप्त हुआ था।

[सं. एल-12012/11/2017-आई आर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 2nd February, 2018

S.O. 250.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 166*/2017)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* No-1, Delhi as shown in the Annexure, in the industrial dispute between the management of Indusind Bank Ltd., and their workmen, received by the Central Government on *02.02.2018.*

[No. L-12012/11/2017– IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1, DELHI

ID. NO. 166/2017

Shri Sunil Kumar Dwivedi,
[F.C.No. 3195], H.No. F-47.
Uttam Nagar,
New Delhi-110059.

Versus

1. Indusind Bank, Zonal Office,
Human Resource Department Unit NOIS TF-2 to TF-8,
3rd Floor, Vasant Kunj Square Mall,
Vasant Kunj, New Delhi.

2.Indusind Bank Ltd.,
Through its General Manager,
Pitampura Branch, New Delhi.

AWARD

In the present case, a reference was received from the appropriate Government vide letter No. L-12012/11/2017-(IR(B-I) dated 09.06.2017. under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

1.''Whether Shri Sunil Kumar Dwivedi is a workman within the provisions of I.D. Act.

2.Whether penalty of dismissal from service w.e.f 08.06.2015 imposed on Shri Sunil Kumar Dwivedi, Associate Manager Indusind Bank after enquiring is just and fair. If not, what relief he is entitled to?"

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the claimant as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained affected during the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the claimant is not interested in adjudication of the reference on merits.

4. Since the claimant has neither put in his appearance nor has he led any evidence so as to prove his cause against the managements, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Date: January 08, 2018.

A.C. DOGRA, Presiding Officer

नई दिल्ली, 6 फरवरी, 2018

का.आ. 251.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिण्डालको इंडस्ट्रज लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय-2, कोल्हापुर (महाराष्ट्र) के पंचाट (संदर्भ संख्या 6/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.10.2018 को प्राप्त हुआ था ।

[सं. एल-43011/4/2014-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th February, 2018

S.O. 251.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (Ref. No. 6/2014) of the Industrial Tribunal/Labour Court-2, Kolhapur (Maharashtra) now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Hindalco Industries Ltd. and their workmen, which was received by the Central Government on 31.01.2018.

[No. L-43011/4/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL NO.2, MAHARASHTRA AT KOLHAPUR

REFERENCE (IT) NO. 6 OF 2014

Between :

The Asstt. Vice President,
M/s Hindalco Industries Ltd.,
Kasarsada Bauxite Mines, Chandgad,
Dist. : Kolhapur - 416 409. ...First Party (Employer)

And

1) Sunil Malusare
2) S.L. Jadhav
3) R.K. Gavade
4) M.R. Sutar
5) N.M. Sawant
6) G.A. Chougule
7) D.B. Gaichare
8) R.S. Kavitkar
9) Samson Y. Korpolu
10) Jaggu V. Kokare
11) Prakash M. Chavan
12) Kanta R. Lad

All workmen of M/s Hindalco Industries Ltd.,
Kasarsada Bauxite Mines, Chandgad,
Dist. : Kolhapur-416 409.
Presented by Indal Khan Kamgar Sanghatna
Registered Trade Union ...Second Party (Union)

Coram : Shri D.V. Thakare, Member

Appearances : Mr. D. D. Dhanawade, Advocate for First Party

Mr. R.M. Apte, Advocate for Second Party

AWARD

(Delivered on 2nd December, 2017)

This is a reference made by the Under Secretary, Government of India, Ministry of Labour, New Delhi vide its Order No. L-43011/4/2014-IR(M) dt.09/07/2014, in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act,1947, and the Central Government referred the said dispute for adjudication to this Tribunal in respect of the matters specified in the Schedule to the reference order.

SCHEDULE

Whether the action of the management of M/s. Hindalco Industrial Ltd. Kasarsada Bauxite Mines, Chandgad in retrenching the services of the workers namely Sh. Sunil Malusare, (2) Sh. S.L. Jadhav, (3) Sh. R.K. Gavade, (4) Sh. M.R. Sutar, (5) Sh. N.M. Sawant, (6) Sh. Gangaram Appa Chougule, (7) Sh. D.B. Gaichare, (8) Sh. Ramachandra Sakharam Kavitkar, (9) Sh. Samson Y. Korapolu, (10) Sh. Jaggu Vithu Kokare, (11) Sh. Prakash Mahadev Chavan, (12) Sh. Kanta Ram Lad (total 12 workers) w.e.f.31/12/2013 is justified ? If not, to what relief the workmen are entitled to ?

2. According to second party union, the first party company unlawfully and arbitrarily retrenched 12 annexed employees of second party union vide Order dt.31/12/2013. It is in violation of term of the 13th Long Term Comprehensive Settlement dt.6/12/2013, and as per this Settlement the services of workmen were impliedly granted at least till 30/06/2014. The first party has taken drastic action without prior consultation with the recognised union. The first party failed to give copy of notice of retrenchment to the Central Government and the union without issuing Notice of Change under Sec.9A of Industrial Disputes Act, the first party tried to bring change in service conditions of the employees. The sudden stoppage of payment of wages and allowance of the employees effected change in service conditions under item 1 and 3 of Schedule. It also affected the benefits of leave with wages and holidays under item 5 and 6 of Schedule. Further the first party suddenly withdrawn customary concession or privilege or change in usage under item 8 of same Schedule without issuing notice under Sec.9A. Thus the first party violated provisions of Sec.9A of Industrial Disputes Act.

3. The Regional Labour Commissioner (C), Pune, Government of India initiated the conciliation proceedings regarding retrenchment notices issued to all annexed employees. In that proceeding the first party took unreasonable, adamant and negative role. The action of abruptly retrenching the annexed employees is unfair, unjust and unlawful as mentioned in letter issued on 25/01/2014. The first party committed unfair labour practice under item Nos.5(b) and (f), 13 and 15 as mentioned in Fifth Schedule of Industrial Disputes Act and committed unfair labour practice which is an offence punishable u/s 25U r/w Sec.25T of Industrial Disputes Act. Moreover, breach of any term of settlement is an offence u/s 29 of Industrial Disputes Act. As per Term No.45 of LTS dt.6/12/2013, the first party clearly agreed not to declare lock-out during the period of settlement. Thus the action of retrenchment being illegal is not acceptable. Thus declaring lock-out is clear violation of said term of settlement which is illegal and punishable under Sec.29 of Industrial Disputes Act. The services of all the employees are transferable under contract of service under the terms of present LTS.

4. As per earlier settlement out of 12 employees many employees unlawfully retrenched and transferred to Durgamanwadi Bauxite Mines and worked there for many years. The seniority of all the workmen in both mines had to be considered for the purpose of retrenchment under Sec.25G of Industrial Disputes Act, which is not done by the first party. The first party failed to set up Grievance Redressal Machinery/ Committee under Sec.9C of Industrial Disputes Act which is an offence u/s 31 r/w Sec.9C of Industrial Disputes Act. The first party failed to allow the 12 workmen and the trade union IKKS to use the Grievance Redressal Mechanism. The lock-out declared by first party is illegal u/s 24 r/w Sec.23C of Industrial Disputes Act. The settlement dt.7/01/2014 has no value in the conciliation proceedings before RLC (C), Pune ended in failure. Hence annexed employees preferred this dispute and prayed that reference be allowed.

5. Vide written statement at Ex.C-4 the first party company refuted all the allegations levelled against it. Each and every allegation levelled against it is denied by the first party. It is contended that the first party had been granted mining lease for Kasarsada Mine which expired in September 2011. The mining activities in said mine discontinued for want of clearance from Forest department but clearance was not denuded by the competent authority. There were 12 permanent employees were employed. The first party is facing difficulties in continuing mining activities at the mines due to lack of renewal of permission. The Writ Petition pending before Hon'ble High Court seeking permission for lifting the bauxite already mined out and staked in the mine which is pending and no mining activities carried out in Kasarsada Mine from 3/10/2011 and management has been paying full wages to all the employees without any work and there is no reasonable possibility of resumption of work in near future. Therefore, all the employees have been paid retrenchment compensation as one month's wages in lieu of notice and compensation @ 15 days average pay for every completed year of service thereof in excess of Six months on 31/12/2013. The reference is not maintainable for want of jurisdiction. The action of retrenchment does not come within Sch.II and III of Industrial Disputes Act, therefore reference is not maintainable. The first party has stated that retrenchment is bonafide and done for legitimate reasons in the interest of business of first party. It is denied that first party illegally retrenched the annexed employees without making requisite compliance of legal provisions. It is contended that reference is invoking Sch.II and III of Industrial Disputes Act and under these Schedule this Tribunal cannot decide jurisdiction of retrenchment. Thus reference is not maintainable. The

retrenchment is completed after following due process of law. Lastly, it is contended that second party is not entitled to any relief. Hence reference be dismissed.

6. On the above pleading putforth by both parties, I framed issues vide Ex.O-8 on 2/09/2016, on submissions by both sides I recasted issue No.2 vide Ex.O-8A on dt.11/11/2016, and again on the submission of Adv.D.D. Dhanawade I recasted issue No.2 vide Ex.O-8B on 20/12/2016, and I noted my findings thereon as under.

	Issues	Findings
(1)	Whether the reference is maintainable ?	In the affirmative
(2)	Does the second party union prove that the action of first party in retrenching the services of 12 enlisted employees w.e.f. 31/12/2013 is legal and justified ?	In the negative
(3)	Does the second party prove that it is entitled to the reliefs claimed ?	In the negative
(4)	What award ?	As per award below

REASONS

7. The second party examined it's witness Narayan M. Sawant at Ex.U-9 and second witness Sunil E. Malusare at Ex.U-36 and closed its evidence vide pursis at Ex.U-37. The first party company examined it's witness Bharat Sudarshan Zinage at Ex.C-75 and closed evidence vide pursis at Ex.C-76.

8. Issue Nos.1 to 3 :- Here the witness No.1 on behalf of second party workman Narayan Sawant deposed on oath and reiterated all the facts mentioned in the Statement of Claim. According to him, he is one of the 12 employees who have been unlawfully terminated/retrenched by the first party. He deposed that refusal on the part of first party to continue to employe 12 workmen w.e.f. 1/01/2014 amounts to illegal lock-out. He deposed that Kasarsada Mine is not closed and if it is an action of closure it amounts to illegal closure. According to him, the scheme under Industrial Disputes Act does not contemplate any settlement with an individual employee. The first party drafted the settlement and obtained signatures of 7 employees by misleading them and by using undue influence and pressure. According to him, none of the employee approached the management for grant of ex-gratia payment. The terms worded in the settlement are not just and reasonable and against natural justice. Thus the so called settlement is not legal and valid. Now the second party workmen are jobless and made to suffer hardships and miseries and due to this situation remaining 5 employees also forced to accept the amount offered by first party which they accepted under protest and without prejudice to their rights. He further deposed that manager has further been granted permission by the Government to extract bauxite from Kasarsada Mine and management has started preparations to undertake new mining operations. Under such circumstances all the annexed employees should be given preference to join services if and when, the new mining operations are undertaken by the first party.

9. He deposed that second party issued letter to RLC (C), Pune on 7/01/2014 at Ex.U-29 and issued letter dt.25/01/2014 to first party at Ex.U-30 and again issued notice to first party on 20/02/2014 at Ex.U-31. The copy of FOC report dt.3/03/2014 sent by RLC (C), Pune to Government of India at Ex.U-32. Second party also sent letter to first party on 18/04/2014 Ex.U-33, in reply to letter dt.15/04/2014. It also issued letter to RLC (C), Pune Ex.U-34 on 11/01/2014.

10. The second witness Sunil Malusare deposed that on 31/12/2013 none of the annexed employees served or offered any notice or order of retrenchment by first party. They were orally told that management wanted to close the working at Kasarsada Mine and sent them home. According to him, earlier these employees were willing to transfer to Durgamanwadi Mine as many of the Chandgad workmen transferred there. He further deposed that from 1/01/2014 onwards the management by approaching the workmen offered them notice pay, retrenchment compensation and gratuity and ex-gratia with retrenchment notices, orders dt.31/12/2013 and also told them that if they do not accept this offer they would be the loosers.

11. The witness on behalf of first party company stated on oath and reiterated all the facts of the written statement. The copy of mining lease in respect of Kasarsada at Ex.C-9 is valid till September 2018 and Forest Department also granted clearance which was expired on 2/10/2011 at Ex.C-10. The mining activities at Kasarsada has been discontinued for want of Forest clearance, therefore, they made application on 30/03/2010 for renewal of mining activities at Ex.C-11. According to him, the Kasarsada Bauxite Mine, Chandgad was the unit of first party and presently 12 permanent employees employed. Prior to discontinuation i.e.2/10/2011 the activity was carried on for mining of raw material bauxite. The first party is facing difficulties in continuing its operations at the mines for lack of forest clearance. The first party made an application on 2/06/2011 at Ex.C-12 for permission to lift bauxite which was mined and staked out but their demand was rejected by Forest Department at Ex.C-13 and permission was rejected by State Government vide order dt.9/10/2012 at Ex.C-14 and Ex.C-15. Even the National Green Tribunal rejected their Appeal No.64/2012 vide order dt.28/02/2013 at Ex.C-16 and Hon'ble Apex Court vide order dt.12/01/2015 disposed of the appeal with liberty to approach appropriate court at Ex.C-17 and pursuant to these directions the first party filed Writ Petition No.4125 Of

2015 before Hon'ble High Court, which is pending. Thus there are no mining activities being carried out in Kasarsada Mine after 3/10/2011 and management is paying full wages to all annexed employees without work. Now, there is no reasonable possibility in near future of presumption of work. Therefore first party compelled to retrench annexed employees after making due compliance.

12. He deposed that annexed employees refused to accept the dues, however, after sometime out of 12, 7 employees accepted retrenchment compensation, legal dues, gratuity, ex-gratia. Further the 7 workers also signed an agreement with first party. He placed reliance on Ex.C-19 to Ex.C-48, Ex.C-57 to Ex.C-61. First party has also deposited amount of gratuity of other 5 employees with RLC (C), Pune vide Ex.C-55 and during conciliation these 5 employees accepted the retrenchment compensation, legal dues etc. and showed willingness to accept amount of gratuity also and made application Ex.C-5. Retrenchment orders of 5 workers at Ex.C-49, Ex.C-53, Ex.C-66, Ex.C-72. The action of retrenchment is duly informed to Government Authority vide Ex.C-54. According to him, since 2/10/2011 till 31/12/2013 there is absolutely no work at Kasarsada Mine even though first party made full payment to annexed employees.

13. The witness No.1 of second party union Narayan Sawant in cross-examination by first party stated that he worked at Kasarsada, Nagartas Wadi in Chandgad Taluka and in Durgamanwadi Radhanagari taluka. He deposed on behalf of all annexed employees in view of letter of authority at Ex.U-28. He admitted that all the 12 employees received retrenchment compensation under protest. He admitted that notice pay, other legal dues and gratuity received by other 12 employees. He further stated that they received under protest. He admitted that copy of agreement dt.6/12/2013 is not on record. He stated that no document filed on record to show that IKKS is a registered union. According to him, by not receiving copy of notice of retrenchment there was loss of service. He further stated that after getting retrenchment amount annexed employees did not search for employment. There is no document to show that first party got the permission for excavation and he admitted that this excavation was done at Kasarsada till 2/10/2011. Admittedly the work of excavation was totally stopped from 3/10/2011. He was retrenched vide notice dt.31/12/2013. He admitted that at the time of retrenchment the annexed employees received their complete dues and first party made efforts for further excavation in the mine but permission was not granted.

14. According to him, employees sustained financial loss, therefore it is their contention that the retrenchment was unjustified. Out of 12 employees one P.M. Chavan, D.B. Gaichare, K.R. Lad, G.A. Chougule, J.V. Kokare, S.V. Korapallu, R.S. Kavitkar entered into agreements at Ex.C-20, 25, 30, 35, 40, 45, 57 with first party, and by virtue of these agreements they got ex-gratia and additional ex-gratia. According to him, the employees made oral request to the management to get ex gratia. He admitted that original application dt.25/04/2014 bears his signature, signature of S.E. Malusare, M.R. Sutar and R.K. Gavade at Ex.C-63. This application is admitted by him.

15. The second witness Malusare in cross-examination admitted that till 2/10/2011 the work of excavation was going on at Kasarsada. He has been retrenched on 31/12/2013 and till that time he was getting wages. He admitted that after 2010-2011 no work of excavation was going on at Kasarsada Mine. He admitted that management offered him notice and compensation on 31/12/2013, but he asked the management to contact the union first. He admitted that he received retrenchment compensation and legal dues. He admitted that there is no document on record in support of contentions raised in para-4 of his affidavit of evidence Ex.U-36. Admittedly there is no document to show that management went to the house of some employees and tried to pressurise them. He could not state the name of officer of management who went to the house of which employee to pressurise him. According to him, out of annexed employees he and other 4 employees submitted application at Ex.C-63 to the management to get ex-gratia payment on 24/05/2014. He signed Ex.C-53 for receiving retrenchment notice dt.31/12/2013.

16. The witness for first party in cross-examination admitted that at Ex.C-20 is the copy of settlement executed between first party and workman P.M.Chavan dt.7/01/2014. He stated that cheque dt.31/01/2014 pertaining to legal dues of this workman was given to him. He could not state whether P.M.Chavan accepted this cheque. He could not state whether P.M.Chavan accepted the DD dt.28/12/2013. According to him, first party paid amount of Rs.2,71,395/- to P.M. Chavan vide cheque No.026249 dt.31/01/2014 and he was also paid Rs.25,000/- vide DD No.450733 dt.28/12/2013 and this workman gave acknowledgment of the receipt of settlement alongwith abovesaid cheque and DD on 7/01/2014. He further deposed that another workman D.B. Gaichare gave endorsement that he received the letter, DD and release order. He could not state who wrote the endorsement. According to him, this workman has been paid amount of Rs.3,38,710/- vide cheque No.026252 dt.1/01/2014 and Rs.25,000/- vide DD No.750 dt.28/12/2013 as ex-gratia. He received the cheque and DD on 7/01/2014.

17. He further deposed that another workman K.R. Lad put his signature on retrenchment notice which is undated. He has been paid Rs.2,08,396/- towards retrenchment compensation vide cheque No.026253 dt.31/01/2014 and DD No.450737 dt.28/12/2013 for Rs.25,000/-.

18. He deposed that another workman G.A. Chougule signed retrenchment notice who has been paid Rs.1,70,134/- towards retrenchment compensation and legal dues vide cheque No.026248 dt.31/01/2014 and DD No.450741 dt.28/12/2013 of Rs.35,000/- which he received on 8/01/2014. Another workman J.V. Kokare signed retrenchment notice. He has been paid Rs.1,07,248/- towards retrenchment compensation and legal dues vide cheque No.026254 dt.31/01/2014 and DD No.450743 dt.28/12/2013 of Rs.35,000/-. He accepted on 7/01/2014. Another workman

S.Y.Korapallu signed retrenchment notice. He has been paid Rs.35,580/- towards retrenchment compensation and legal dues vide cheque No.026250 dt.31/01/2014 and DD No.450745 dt.28/12/2013 of Rs.35,000/-. He accepted on 8/01/2014. Another workman R.S. Kavitkar signed retrenchment notice. He has been paid Rs.3,03,207/- towards retrenchment compensation and legal dues vide cheque No.026251 dt.31/01/2014 and DD No.450747 dt.28/12/2013 of Rs.25,000/-. He accepted on 31/01/2014.

19. He further deposed that another workman S.L. Jadhav signed the retrenchment notice on 24/03/2014 and under protested he accepted an amount of Rs.4,03,585/- towards retrenchment compensation and legal dues vide DD No.450730 dt.28/12/2013. Another workman M.R. Sutar signed the retrenchment notice on 24/03/2014 and under protest he accepted amount of Rs.55,933/- towards retrenchment compensation and legal dues vide DD No.450738 dt.28/12/2013. Another workman N.M. Sawant signed the retrenchment notice dt.24/3/2014 and under protest he received amount of Rs.270658/- towards retrenchment notice and legal dues vide DD No.450748 dt.28/12/2013. Another workman R.K. Gavade signed the retrenchment notice on 24/03/2014 and under protest he accepted amount of Rs.54,862/- towards retrenchment compensation and legal dues vide DD No.450750 dt.28/12/2013. Another workman S.E. Malusare signed retrenchment notice dt.24/03/2014 and under protest he received amount of Rs.2,43,420/- towards retrenchment compensation and legal dues vide DD No.450752 dt.28/12/2013.

20. He admitted notice under Form 'P' has been sent to concerned authorities on 31/12/2013 pertaining to all annexed employees which was received by Government on 1/01/2014. He admitted that first party owns one bauxite mine at Durgamanwadi in Radhanagari Taluka and annexed employees used to get transferred from Durgamanwadi to Chandgad and vice-versa. He admitted that on 6/12/2013 the first party entered into settlement with all employees including annexed employees before RLC (C), Pune in conciliation. There is no document to show that on or before 31/12/2013 the union was informed about retrenchment compensation. According to him, first party did not receive copy of letter dt.7/01/2014 and copy of notice dt.25/01/2014 and notice dt.18/04/2014.

21. The learned advocate Mr.R.M. Apte on behalf of second party union argued that the retrenchment notices dt.31/12/2013 are not served on the annexed employees. As per Ex.C-54 Form 'P' no compliance made as per provisions of of Sec.25-F of Industrial Disputes Act. The first party has produced false documents. No details of payment are given in the notices dt.31/12/2013. The employees did not accept the amount. On 7/01/2014 seven employees were given notices of retrenchment compensation. No compensation as per Sec.25-F of Industrial Disputes Act paid to any of the employees. There are two bauxite mines owned by first party one is located at Kasarsada and another at Durgamanwadi and first party looks after two mines and there is functional integrity. Moreover seniority list of workers of both mines was not considered while retrenching the annexed employees. The first party produced 75 documents which are not sufficient to support their defence. The payments are made at belated stage which can be seen from Ex.C-19. It is an admitted fact that payment of retrenchment compensation was not received on 31/12/2013 by concerned employees. He relied on Ex.C-20 and Ex.C-21. He further argued that the aspect of retrenchment is vital issue in this matter. Provisions of Sec.25-F of Industrial Disputes Act are not strictly complied with. The management made monetary compliance but paid less legal dues. In fact it was incumbent on the first party to make payment before 31/12/2013 as per retrenchment notice. Even less gratuity is paid to the annexed employees which is seen from Ex.C-66 to Ex.C-72.

22. According to him, the first party made payment on 24/03/2014 instead of making the same on 31/12/2013. He further argued that out of 12 employees the first party paid complete payment to 2 employees belatedly. He further argued that the employees Malusare, Jadhav, Gavade, Sutar and Sawant strongly contested their claims and received the payment under protest. The cheques pertaining to ex-gratia payment are handed over after 28/12/2013. The first party had established that Kasarsada, Duargamanwadi Mine, both mines belonged to first party. There is functional integrity in both establishments. While transferring the employees it was incumbent to follow the seniority list of employees which is not followed. The settled principle of last-come-first-go was not followed. The witness of first party has exaggerated the payment made to employees. It is a case of retrenchment for no work and not a case of closure. The first party committed unfair labour practice by not paying complete compensation as per law to the employees, therefore, the reference needs to be allowed. He also relied on,

(i) Bhuvnesh Kumar Dwivedi v/s M/s Hindalco Industries Ltd.(Civil Appeal Nos.4883-4884 of 2014 Dated 25/04/2014

Ratio : No workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in clauses (a) and (b) of Sec.25F of the Act are satisfied. In terms of clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

(i) 2015 LLR 225 (Hon'ble Supreme Court)

(ii) 2015 LLR 309 (Hon'ble Punjab & Haryana H.C.)

23. Per contra, the learned advocate Mr. D. D. Dhanawade for first party company categorically argued that this is a stale claim. The settlement dt.6/12/2013 is not on record. Form 'P' provided under Industrial Disputes Act, is not

applicable to second party union. He relied on Rule 77 and 25-L of Industrial Disputes Act. According to him, there is no breach of Sec.9A of Industrial Disputes Act. There is no evidence of breach of provisions of Sec.25-F of Industrial Disputes Act and unjustness against he first party. There is no pleading of availability of work in both mines. He relied on Ex.C-4 and documents below Ex.C-8. He also relied on Ex.U-36 the cross-examination para-16 and 17 page Nos.6, 7, 10 of cross-examination. According to him, as per Ex.C-19 payment made on 31/12/2013 to annexed employees and as per Ex.C-20 the employees received the money. According to him, all the employees have been retrenched therefore there was no need to follow principle of Sec.25-G of Industrial Disputes Act i.e. last come-first go. There was no grievance of non-compliance of Sec.25-F and Sec.25-G of Industrial Disputes Act in conciliation proceeding therefore, this issue cannot be raised in this reference. The employees have been paid compensation inclusive of gross salary for 26 days including allowances.

24. He further argued that first party paid gratuity on the basis of basic pay + dearness allowance without allowances for 26 days. Thus the first party has adequately paid compensation. There is no evidence to show that requisite compensation is not paid to the annexed employees. According to him, the annexed employees have been paid complete compensation and they cannot demand these monetary benefits twice, so this is a false and bogus claim. Hence reference be rejected. He is placing reliance on,

(i) The Executive Engineer and Anr. V/s Dnyaneshwar Sahadeorao Tajane (2015 LLR 648-Hon'ble Bombay H.C.)

Ratio : Labour Court has no power to adjudicate such disputed facts which are not covered under the term of reference made to it or the workman has brought on record for the first time only before the Labour Court.

An award passed by Labour Court is liable to be set aside if the Labour Court has adjudicated the facts which are not part of reference or incidential to the reference.

(ii) Executive Engineer, Public Works Division No.1, Akola v/s Ganesh Kashiram Ingole (2015 LLR 1083-Hon'ble Bombay H.C.)

Ratio : If the amount of retrenchment compensation has been tendered by the management, non-collecting of amount of compensation by the workman on his own volition is of no consequence.

(iii) Leelabhai Sakharam Bhagwat and Ors. v/s Shobha Industries (2009 LLR 141-Hon'ble Bombay H.C.)

Ratio : Workmen with all entitled to compensation for closure of an establishment and the court cannot question motive of the employer in closing down the establishment.

(iv) K. Mohan & Co. International, Nashik v/s Nashik Workers Union, Nashik and Anr. (2009 I CLR 34-Hon'ble Bombay H.C.)

Ratio : Held that there were less than 100 workers in the establishment at the time of closure notice was issued. Finding of Industrial Court is contrary to law. Sec.25-O not applicable. Finding of Industrial Court cannot be sustained.

(v) Lal Jhanda Rockman Cycle Industries Workers Union, Ludhiana v/s State of Punjab and Ors. (2007 LLR 421-Hon'ble Punjab and Haryana H.C.)

Ratio : If a division/unit of an establishment becomes enviable, it cannot be forced to be continued by incurring the liabilities by way of wages of the workmen etc. hence it cannot be forced to continue its production by keeping in employment, the workmen.

(vi) M/s Tata Iron and Steel Co. Ltd. v/s State of Jharkhand and Ors. (Civil Appeal No.8246 of 2013 Dt.16/09/2013- Hon'ble Supreme Court)

(vii) Indian Tourism Development v/s Delhi Administration and Ors. (1982 Lab.IC 1309-Hon'ble Delhi H.C.)

25. Vide reply, learned advocate Mr. R.M. Apte for second party argued that page-2(a) to (d) of Statement of Claim are not disputed and material hence deemed to be admitted. There is breach of Sec.9-A of Industrial Disputes Act. Sch.V, Item 5-B, 5-F, 13, 15 are violated. The unfair labour practice is established against first party.

26. In view of rival submissions putforth by both sides, I perused the material, evidence and documents on record. Here the second party union has come with the specific grievance against the first party that all of sudden by violating the provisions of Sec. 9A of Industrial Disputes Act it retrenched the annexed employees without making compliance of Sec.25-F of Industrial Disputes Act and thus indulged in unfair labour practice and committed offences u/s 25-U r/w 2-5-T, u/s 31 r/w Sec.9A, Sec.29 r/w Sec.19, Sec.31 r/w Sec.25, Sec.31 r/w Sec.9C, Sec.26 r/w Sec. 24, r/w Sec.23C and u/s 30A r/w Sec.25FFA of Industrial Disputes Act. This action of retrenchment being illegal and unacceptable. Therefore, the order of retrenchment be quashed and set aside and the first party be directed to reinstate all annexed employees with continuity of service and back wages after declaring the retrenchment is illegal.

27. According to stand point raised by first party, the first party was granted mining lease at Ex.C-9 in respect of Kasarsada Mine. The clearance certificate issued by Forest Office expired on 2/10/2011 at Ex.C-10 and first party applied for renewal on 30/03/2010. In this unit at Kasarsada only 12 permanent employees were working. The work of excavation were discontinued on 2/10/2011. The first party was informed vide letter dt.6/11/2012 that their demand is rejected by Forest Department at Ex.C-13. However, the application for lifting the stock of bauxite was rejected on 9/10/2012 by the State Government at Ex.C-14 and Ex.C-15. Thus the excavation in the Kasarsada Mine is already stopped. Therefore, no option left with first party to close its mining activities in the said mine and ultimately it constrained to retrench the annexed 12 employees by making payment of retrenchment compensation and this payment is promptly made which the employees have received. Now, after receiving this payment they cannot reagitate this issue of compliance of Sec.25-F of Industrial Disputes Act once again. Thus the claim is bogus and they are not entitled to any claim raised in the Statement of Claim.

28. The documents filed below Ex.C-9, copy of Forest clearance at Ex.C-10 and copy of renewal of mining lease placed on record by the first party. Admittedly there is no renewal of mining excavation for want of permission from Forest Department. Ex.C-12 is the application requesting to lift the bauxite already mined out and staked in the mine. Ex.C-13 is the letter issued to Forest Department for lifting permission which was rejected by State Government vide Ex.C-14 and Ex.C-15. Ex.C-16 is the order issued by National Green Tribunal dt.28/02/2013. The order of Hon'ble Apex Court dt.12/01/2015 at Ex.C-17 and Ex.C-18. Ex.U-11 to Ex.U-25 are the transfer orders issued to annexed employees. Ex.U-26 is the memo issued to workman Narayan Sawant towards retrenchment dt.31/12/2013. As per the endorsement put on the this letter the concerned workman refused to accept the letter dt.31/12/2013. The retrenchment order dt.31/12/2013 issued to P.M. Chavan, workman at Ex.C-19 alongwith statement of reasons and as per his endorsement he received DD worth Rs.3,31,636/- inclusive of one month's wages Rs.17,041/- in lieu of notice and Rs.3,14,595/- towards retrenchment compensation. The Memorandum of Settlement at Ex.C-20 pertains to this workman. Alongwith this payment vide cheque dt.31/01/2014 he received amount of Rs.2,71,396/- towards gratuity and Rs.25,000/- towards ex-gratia at Ex.C-22 and Ex.C-23.

29. As per Ex.C-24 another employee D.B. Gaichare was paid Rs.17,925/- in lieu of notice, Rs.3,92,970/- towards retrenchment compensation on 31/12/2013. The total amount comes to Rs.4,10,895/-. Vide cheque dt.31/01/2014 he received amount of Rs.3,38,710/- towards gratuity and Rs.25,000/- towards gratuity at at Ex.C-26 to Ex.C-28. As per Ex.C-29 another employee K.R. Lad was paid Rs.16,809/- in lieu of notice, Rs.2,42,435/- towards retrenchment compensation on 31/12/2013. The total amount comes to Rs.2,59,244/-. Vide cheque dt.31/01/2014 he received amount of Rs.2,08,396/- towards gratuity and Rs.25,000/- towards gratuity at at Ex.C-29, Ex.C-58 to Ex.C-60. As per Ex.C-61 another employee G.A. Chougule was paid Rs.15,149/- in lieu of notice, Rs.69,917/- towards retrenchment compensation on 31/12/2013. The total amount comes to Rs.85,066/-. Vide cheque dt.31/01/2014 he received amount of Rs.1,70,134/- towards gratuity and Rs.35,000/- towards ex-gratia at Ex.C-31 to Ex.C-33.

30. As per Ex.C-34 another employee J.V.Kokare was paid Rs.15,238/- in lieu of notice, Rs.70,328/- towards retrenchment compensation on 31/12/2013. The total amount comes to Rs.85,566/-. Vide cheque dt.31/01/2014 he received amount of Rs.1,71,248/- towards gratuity and Rs.35,000/- towards ex-gratia at Ex.C-36 to Ex.C-38. As per Ex.C-39 another employee S.Y.Korapallu was paid Rs.11,889/- in lieu of notice, Rs.41,153/- towards retrenchment compensation on 31/12/2013. The total amount comes to Rs.53,042/-. Vide cheque dt.31/01/2014 he received amount of Rs.35,580/- towards gratuity and Rs.35,000/- towards ex-gratia at Ex.C-41 to Ex.C-43. As per Ex.C-44 another employee R.S. Kavitkar was paid Rs.17,923/- in lieu of notice, Rs.3,51,559/- towards retrenchment compensation on 31/12/2013. The total amount comes to Rs.3,69,482/-. Vide cheque dt.31/01/2014 he received amount of Rs.3,03,207/- towards gratuity and Rs.25,000/- towards ex-gratia at Ex.C-46 to Ex.C-48. As per Ex.C-49 another employee S.L. Jadhav was paid Rs.18,539/- in lieu of notice, Rs.3,85,046/- towards retrenchment compensation on 31/12/2013. The total amount comes to Rs.4,03,585/- which he received under protest on 24/03/2014.

31. As per Ex.C-50 another employee M.R.Sutar was paid Rs.12,537/- in lieu of notice, Rs.43,396/- towards retrenchment compensation on 31/12/2013. The total amount comes to Rs.55,933/- which he received under protest on 24/03/2014. As per Ex.C-51 another employee N.M.Sawant was paid Rs.17,549/- in lieu of notice, Rs.2,53,109/- towards retrenchment compensation on 31/12/2013. The total amount comes to Rs.2,70,658/- which he received under protest on 24/03/2014. As per Ex.C-52 another employee R.K. Gavade was paid Rs.12,297/- in lieu of notice, Rs.42,565/- towards retrenchment compensation on 31/12/2013. The total amount comes to Rs.54,862/- which he received under protest on 24/03/2014. As per Ex.C-53 another employee S.E. Malusare was paid Rs.17,059/- in lieu of notice, Rs.2,26,361/- towards retrenchment compensation on 31/12/2013. The total amount comes to Rs.2,43,420/- which he received under protest on 24/03/2014.

32. As per Ex.C-55 the Asstt. Labour Commissioner (Central), Pune was informed on 3/02/2014 that the employees viz. S.E. Malusare, S.L. Jadhav, R.K. Gavade, M.R. Sutar and N.M. Sawant have been retrenched on 31/12/2013 who are entitled for gratuity, but they failed to collect their gratuity amounts despite duly informed. Even they have been issued notice dt.20/01/2014 to collect the gratuity amount but they did not respond. Therefore, the first party compelled to deposit the gratuity amount of abovesaid 5 workmen worth Rs.8,19,822/- and this letter was duly received by Asstt. Labour Commissioner Office.

33. Thus from the perusal of Ex.C-19 to Ex.C-53 it clearly reveals that there is compliance of Sec.25-F of Industrial Disputes Act on the part of first party and it cannot be said that it has not strictly followed these provisions while terminating the services of annexed employees. From these documents it is also clear that the compliance was made i.e. 31/12/2013 as the first party kept ready account payee demand draft drawn on HDFC Bank. Merely the employees received these demand drafts on 24/03/2014 under protest it does not mean that there is breach of Sec.25-F(1) of Industrial Disputes Act. The management has stated the reasons for retrenching these employees in these retrenchment letters. Though it is the contention of second party union that short payment is made by first party while retrenching the employees. But in this respect no specific and precise evidence led by second party union to justify the grievance of short payment. Even the witness examined by second party workman did not throw any light about the details of short payment in their respective versions. Thus, there is vague and cryptic pleading without having support of elaborated evidence. Thus the second party union failed to establish its claim of short payment.

34. Though the second party union tried to submit that all the retrenched 12 employees could have been absorbed in another bauxite mine at Durgamanwadi after closing Kasarsada Mine, but there is no specific prayer in the entire Statement of Claim, merely putting one suggestion in cross-examination is not sufficient and cannot take place of evidence. There is nothing on record to show that there is functional integrity between the management of Durgamanwadi and Kasarsada Mine. So there is no question of absorbing/transferring retrenched employees at Durgamanwadi mine. It is also not brought on record that Durgamanwadi unit is still survived. There is no evidence to show that one unit cannot survive without other in determining the fact of functional integrity. There is no evidence to show that functions of both mines were so integrally connected so as to constitute one establishment. Here the relation between abovesaid two units will be judged must depend on the facts needs to be proved. Thus in this case the factor of functional integrity between Kasarsada and Durgamanwadi Mines is not established.

35. Though the union is harping on the terms and conditions of the Settlement dt.6/12/2013 in support of the claim, but admittedly the copy of this settlement is not placed on record. It is the grievance of second party union that Notice of Change u/s 9A of Industrial Disputes Act, in relation to matter specified under Fourth Schedule of Industrial Disputes Act was not issued before effecting retrenchment. In fact as per item 11 of Fourth Schedule of Industrial Disputes Act, the provisions of Sec.9A is not applicable, therefore, the second party cannot take recourse of Sec.9A as well as Fourth Schedule of Industrial Disputes Act.

36. Further according to first party, it has retrenched all 12 employees working at Kasarsada Mine, therefore, there is no question of following mandatory provisions of Sec.25-G of Industrial Disputes Act i.e. last come-first go for considering the seniority of the employees. Thus these provisions are also not applicable in the present reference.

37. Though it is alleged that first party committed unfair labour practice under item No.5(b) & (f), 13 and 15 as mentioned in Fifth Schedule of Industrial Disputes Act, but in this respect no sufficient evidence is brought on record. There is no evidence to show that first party infringed term No.45 of LTS dt.6/12/2013. It has not proved that the services of the annexed employees were transferable as per Settlement dt.6/12/2013 and also as per earlier Settlement. All the allegations levelled in the Statement of Claim are not categorically proved by leading evidence by the second party union. Mainly it is the grievance of second party union that there is no proper compliance of Sec.25-F of Industrial Disputes Act, therefore, the retrenchment of all 12 employees itself becomes illegal. To support this allegation no convincing evidence is brought on record as already discussed.

38. Even here assuming that the first party did not intimate the annexed employees before retrenching them in violation of Sec.25-N of Industrial Disputes Act. But it is not disputed that the first party could not continue the work of excavation of bauxite ores for want of permission of Forest Department and this situation was beyond the control of first party which resulted in stoppage of work. As per settled law the closure of stoppage of whole or part of business is the function of management which is entirely in the discretion of the employer carrying on the business exercised by the employer. Thus such a matter carrying on business is a right and not an obligation. Therefore, such right to close down the business has to carry it on is concerned the industrial adjudication cannot interfere with the discretion exercised by the employer and under such circumstances it has no power to direct the employer to continue the whole or part of business which the employer decided to shut down nor it can direct the employer to reopen the business which he has once closed down.

39. Here the first party has shown the reason for closing Kasarsada Mine and the reason is well accepted by the second party union and this evidence is not contradicted. To determine whether this act on the part of first party was device or pretense to terminate the services of the workmen or whether it is bonafide or far beyond the control of the employer has to be determined on the evidence produced before the Tribunal. Here in such circumstances or admitted by second party union and therefore the first party was unable to carry out the mining operations and unable to run the business and decided to close down the unit. So considering all these relevant facts prevailing at the time of closure these grounds were germane and bonafide. It has not happened that abruptly the first party took the decision of closure. Considering the fact that the first party cannot be compelled to continue mining operations at Kasarsada Mine and it cannot be compelled to reinstate the annexed employees. So far as compliance of Sec.25-F of Industrial Disputes Act is concerned in view of the documents Ex.C-19 to Ex.C-53 it reveals that this mandatory compliance is made by the first party while retrenching all the employees and this compliance is admitted by witnesses of second party union.

40. Due to closure of mining operations the question of reinstatement doesn't arise. What remains is the compensation to be paid in terms of Sec.25-F of Industrial Disputes Act, and in this case such payment is already made by the first party. Even the first party paid amount of gratuity and ex-gratia to the employees and this payment is also not disputed by the second party union. Considering the consequences beyond the control faced by first party the provisions of Chapter-VB of Industrial Disputes Act are not applicable and not attracted and there was no necessity to seek permission from the Government.

41. The learned advocate Mr.R.M. Apte for second party union argued that the Central Government made this reference to this court to decide Whether the action of retrenchment is justified ? Therefore, this court is bound to answer this reference. No doubt as per Sec.10 of Industrial Disputes Act, the Tribunal is bound to answer specific terms of reference, objections, if any. Considering the entire evidence and documents placed on record and after carefully perusal the same, after making correct appreciation of evidence adduced on record, there is no hesitation to conclude that there is no illegality or infirmity in the same. Here the second party was unable to point out any serious error of law committed by first party and satisfied the query raised in the Schedule of reference. In short, in view of the abovesaid discussion, evidence and circumstances on record the second party union failed to prove its claim raised in the Statement of Claim. Though it is contended that reference is not maintainable but in this respect no convincing evidence is brought on record by the first party, obviously, the reference is maintainable. The second party failed to show that the action of first party in retrenching the services of 12 enlisted employees w.e.f.31/12/2013 is unjustified. Thus the second party union is not entitled to the reliefs claimed in the reference. Therefore, I answer issue No.1 in the affirmative, Issue Nos.2 and 3 in the negative and I proceed to pass the following award.

AWARD

(i) The reference is hereby answered in the negative.

(ii) The office is hereby directed that Four copies of this Award be sent to the Under Secretary, Ministry of Labour, Government of India, New Delhi for publication and for necessary action.

(iii) No order as to costs.

Sd/-

Kolhapur. D. V. THAKARE, Member,

Date : 2nd December 2017. Industrial Tribunal No.2, Kolhapur

नई दिल्ली, 6 फरवरी, 2018

का.आ. 252.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैगनीज अयस्क (इंडिया) लिमिटेड (मॉयल) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नागपुर पंचाट (संदर्भ संख्या 2/2015) प्रकाशित करती है जो केन्द्रीय सरकार को 31.10.2018 को प्राप्त हुआ था।

[सं. एल-27011/01/2015-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th February, 2018

S.O. 252.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (Ref. No. 2/2015) of the Central Government Industrial Tribunal/Labour Court Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Manganese Ore (I) Ltd. (MOIL) and their workmen, which was received by the Central Government on 31/01/2018.

[No. L-27011/01/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

CGIT/NGP/02/2015

DIARY

Date	Exhibit No.	PROGRESS	
19 28.11.2017		**Party No.1** : The Chairman & Managing Director (Tech), Manganese Ore (I) Ltd., MOIL Bhawan, IA, Katol Road, Nagpur – 440013. V/s. **Party No.2** : The General Secretary, MOIL Kamgar Sanghatan (INTUC), MOIL, West Court, Katol Road, Chhaoni, Nagpur-440013 **ORDER** In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute for adjudication between the management of (The Chairman & Managing Director, Manganese Ore (I) Limited and the General Secretary, MOIL Kamgar Sanghatan (INTUC)) vide letter No. L-27011/01/2015-IR(M) dated 07.05.2015, on the following schedule:- **"Whether the action of the management of MOIL Ltd., Nagpur in not promoting Sh. Kuwarsingh Ichharam, Piece Rated worker as Rocker Shovel is fair, Just and Legal? If not, what relief the concerned workman is entitled for?"** 2. Today, advocate for the management is present. Union Secretary, Shri Ramavtar Devangan appears on behalf of the petitioner and files a Pursis I.A. No. 1. On behalf of the management Shri Masood Sharif, advocate present. Pursis is filed by Secretary General of MOIL Kamgar Sanghathan (INTUC), which is marked as I.A. No. 1. On behalf of the management, they have no objection to withdraw the case. 3. On perusal of the record, I want to mention some facts:- 4. The petitioner has not filed any statement of claim. So, the management has not filed written statement. So, no further progress is taken place. 5. The Pursis, I.A. No. 1 is accepted without objection of the opposite party and permission is granted to the petitioner's representative to withdraw the case. So, the application for withdrawal of reference is allowed. Hence, it is ordered:- **ORDER** **The application for withdrawal of the case is allowed. The case is treated as withdrawn. The application filed by the Party No. 2 for withdrawal of the case is made part of the order. The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.** S. S. GARG, Presiding Officer	

नई दिल्ली, 6 फरवरी, 2018

का.आ. 253.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मिनरल एक्सप्लोरेशन कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नागपुर पंचाट (संदर्भ संख्या 18/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.10.2018 को प्राप्त हुआ था।

[सं. एल-29012/104/2008-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th February, 2018

S.O. 253.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (Ref. No. 18/2009) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mineral Exploration Corporation Ltd. and their workmen, which was received by the Central Government on 31/01/2018.

[No. L-29012/104/2008-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

CGIT/NGP/18/2009

DIARY

Date	Exhibit No.	PROGRESS	
60 19.12.17		**Party No. 1** : The Chairman-cum-Managing Director, Mineral Exploration Corporation Ltd., Highland Drive, Highway, Seminary Hills, Babasaheb Ambedkar Bhavan, Nagpur – 440006. V/s **Party No. 2** : The General Secretary, Indian National Mineral Exploration Corporation Employees Union, Utilities Complex, Seminary Hills, Nagpur. **ORDER** In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute for adjudication between the management of (The Chairman-cum-Managing Director, MECL and the General Secretary, Indian National Mineral Exploration Corporation Employees Union) vide letter No. L-29012/104/2008-IR(M) dated 22.05.2009, on the following schedule:- **"Whether the action of the management of Mineral Exploration Corporation Ltd. for not re-opening the LTC benefit to its regular employees though they have implemented the wage revision w.e.f. 01.01.1992 & 01.01.1997 as per the instructions contained in memorandum dated 28.02.2002 of Public Enterprises is justified, legal & proper? What relief the regular employees of MECL, Nagpur are entitled to?"** 2. On receipt of the reference, notices were issued to parties to file claim, and written statement and accordingly the petitioner filed its	

		Statement of claim, rejoinder and affidavit and the party No.1 filed its written statement. Today, representative for the both parties filed an application for disposal of the reference as amicably settled between the parties and also enclosed Annexure-I as a settlement of claim. The representative of the worker, General Secretary of the union, Shri G.S. Bhagat and on behalf of the management, Shri Devidas N. Yerurkar are present personally and submitted that, case is disposed of accordingly as per settlement. They also filed authority of Shri G.S. Bhagat. So, the application for withdrawal of reference is allowed. Hence, it is ordered:- **ORDER** **The application for withdrawal of the case is allowed. The case is treated as withdrawn. The application with copy of settlement filed by the both parties for withdrawal of the case are made part of the order. The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.** S. S. GARG, Presiding Officer	

नई दिल्ली, 6 फरवरी, 2018

का.आ. 254.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण /श्रम न्यायालय, पुणे (महाराष्ट्र) पंचाट (संदर्भ संख्या 89/2007) प्रकाशित करती है जो केन्द्रीय सरकार को 31/10/2018 को प्राप्त हुआ था ।

[सं. एल-30011/60/2006-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 6th February, 2018

S.O. 254.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (Ref. No. 89/2007) of the Central Government Industrial Tribunal/Labour Court, Pune (Maharashtra) now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd. and their workmen, which was received by the Central Government on 31/01/2018.

[No. L-30011/60/2006-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, 4TH LABOUR COURT, AT PUNE.

(Presided over by Dhanashri R. Khamkar)

Ref. (I.D.A.) No.89/2007. **Exh.O-9.**

Adjudication Between.

1) Bharat Petroleum Corporation Ltd.,

Sahajanand Complex, 1st Floor,

2416 Jan, Mithiya Road,

Camp, Pune - 411001. **First Party No.1.**

2) Shri. Y. S. Shaha, Contractor,

C/o. Bharat Petroleum Cor., Ltd.,

Sahajanand Complex, 1st Floor,

2416 Jan, Mithiya Road,

Camp, Pune - 411001. **First Party No.2.**

V/s.

Petrol Diesel Pump Karmachari Sangh,

Prathamik Shalesamor, Mumbai-Pune Road,

Kasarwadi, Pune - 34. **Second Party.**

CLAIM :-

Reinstatement with continuity of service and full back wages of Second Party.

First party No.1 :- Adv. Smt. Mhaske.

First party No.2 :- Ex-parte.

Second party :- Adv. Sawant.

AWARD

(Delivered on this 14th day of September, 2017)

1) This is the reference made by Central Government through Regional Commissioner, Pune to adjudicate the dispute raised by the second party to the effect, *"Whether the services of the second party i.e. 20 workers (list enclosed in Schedule-A) were illegally terminated by M/s. Y. S. Shah, contractor of Bharat Petroleum Corporation Limited, Pune w.e.f. 14/11/2005, if yes, whether the second party is entitled for the reliefs of their reinstatement with continuity of their service and their full back wages from first party,* under Section-(d) of Sub-Section (1) and Sub-Section (2A) of Section-10 of the Industrial Disputes Act, 1947".

2) The brief facts of the second party's case are under :

The first party No.1 is a company registered under the Companies Act. It is a popular company, engaging in refining and marketing of petroleum products. The first party No.1 is controlled and headed by the Central Government. It has its own petrol pump through out in India. The first party No.1 runs a petrol pump at R.T.O. Pune. It has engaged more than 75 workers, working in three shifts. All labour laws were applicable to first party No.1 company. The second party was a registered union. The workers working on almost all petrol pumps are the members of second party union.

3) The second party contended that the workers enlisted in Schedule-A were appointed by the first party No.1 company. At the time of their appointments, the first party No.1 has taken their interviews. After appointment the first party No.1 has given uniforms, identity cards to all these workers. The provident fund and E.S.I. Scheme were also applicable to them. As these workers have completed their 240 days service in year preceding to their termination, when the second party union demanded the benefits of permanency on behalf of all workers to first party No.1 company then the first party has not given any response to it. As against it on 14/10/2005, suddenly all workers listed in Schedule-A were terminated by first party No.1 from services without any reasons and without observing the provisions of Section 25 (F) of the Industrial Disputes Act, 1947. This act of first party No.1 amounts to illegal termination.

4) The second party further contended that they were not the employee's of the first party No.2, the contractor, Shri. Y. S. Shaha. The first party No.2 has no legal Labour Contractor Licence. There was no labour contractor agreement between first party No.1 and first party No.2. Therefore, the first party No.2 was never contractor but he was the officer of first party No.1 company. Thus, all these workers are not the employee's of first party No.2 but of first party No.1 company. The second party therefore constrained to file this case and prayed for to direct the first party to reinstate them with continuity of their services with their full back wages against the first party.

5) The first party No.1 has resisted this reference and statement of claim of second party by filing its written statement at **Exh.C-7**. The first party No.1 has denied all adverse allegations levelled against it by the second party in its statement of claim. The first party raised its objection that the present reference is not maintainable and is bad in law. In this respect, the first party contended that the first party No.1 is an 'Industry' carried on by or under the authority of Central Government. Hence, the appropriate Government in this case is the Central Government as per Section 2 (a) of the Industrial Disputes Act, 1947. Therefore, the reference by the State Government which is not an appropriate Government in respect of first party No.1 is bad in law.

6) The first party No.1 contended that it runs a petrol pump at R.T.O. Pune. It had appointed first party No.2 Shri. Y. S. Shaha as labour contractor for operating this petrol pump and that contractor has to provide services as agreed as per the agreement entered into first party No.1 and him for this purpose. Accordingly, the first party No.2 had engaged their employee's for the said activity. The first party No.2 fixed the salary of these members of second party and thus these second party workers were the employee's of first party No.2. Therefore, there was no employer-employee relationship between the first party No.1 and second party workers. On all these grounds the first party requested to reject the said application.

7) Inspite of due service of Notice the first party No.2 was not appeared before the court. Hence, this court has passed an ex-parte order against first party No.2 by order dated 07/11/2008.

8) On rival pleadings of both the parties to this case, my learned predecessor has framed the following issues at **Exh. O-8** and I recorded my findings thereon for the reasons discussed below :

	ISSUES	**FINDINGS**
1)	Does the second party union prove that their members were the employee's of the first party No.1 ?	**.. Negative.**
2)	Does the second party union prove that the first party No.1 has illegally terminated the services of members of second party w.e.f. 14/11/2005 ?	**.. Negative.**
3)	Whether the second party's members / workmen are entitled for reinstatement with continuity of service and full back wages as prayed for ?	**.. Negative.**
4)	What award ?	**.. As per final order.**

REASONS

9) The second party has lead oral as well as documentary evidence in support of his contentions.

The second party has examined Balasaheb Ramdas Bhokhand at Exh.U-25, Mahesh Nathuram Umbrajkar at Exh.U-19 and Navnath Lakshman Gaikwad at Exh.U-21 and has filed the affidavit of Faaruk Mahammad Hanif Pathan at Exh.U-16, Vijay Shivaji Mhaske at Exh.U-18, Ashok Kacharu Vaidya at Exh.U-20, Yashwant Dharma Gaikwad at Exh.U-22, Kalappa Masanna Dupargade at Exh.U-23, Sachin Kishor Aaglakhe at Exh.U-24, Dakappa Chandrasha Gaikwad at Exh.U-26, Nana Ramdas Ovhal at Exh.U-27, Kisan Chandhu Darekar at Exh.U-28, Indrajeet Vasant Chavan at Exh.U-29, Kishor Annarao Gaikwad at Exh.U-30 and Faaruk Hanif Pathan at Exh.U-38 in support of his contentions.

The first party examined CW1 Shri. Indrajit Singh at Exh.C-20 and CW2 Shri. Gorav at Exh.C-24 in support of its contentions.

Heard argument advanced by the learned counsels for both the parties to this case.

The oral as well as documentary evidence lead by both the parties to this case are discussed hereinafter issue wise :

AS TO ISSUE NO.1 :-

10) It has come in the evidence of UW1 Shri. Suresh Namdev Thorat at Exh.U-9 that he was appointed by first party No.1 after taking his interview. Similarly, UW2 Shri. Mahesh Nathuram Umbrajkar at Exh.19 in his evidence stated that first party No.1 had given advertisement in the daily Newspaper "Sakal" and he has been interviewed by officers of the first party No.1. Thus, they are the employee's of first party No.1. Further, they have completed their 240 days of continuous service in year preceding to their termination, hence, they are eligible for becoming permanent worker.`

11) However, to prove their contentions, the second party has not produced any documentary evidence i.e. Newspaper advertisement or interview letter, appointment letter etc. to show that the first party No.1 has taken their interviews and appointed accordingly. Further, to prove the contention of 240 days continuous service the second party has not produced any documents on record like muster rolls or salary slips. Similarly, from the evidence of UW3 Shri. Balasaheb Ramdas Bhokhand at Exh.U-25, it is observed that he has not deposed anything to show that he was the employee of first party No.1. Thus, the evidence given by witnesses on behalf of second party are not believable and acted on.

12) As against the first party has contended in the evidence of Shri. Indrajit Singh at Exh.C-20, that the first party No.1 was a public sector undertaking wherein the appointment, salary as well as allowances are regulated by the service

rules of the Central Government. During cross-examination of UW2. The witness has adminitted that the first party No. 1 was a Central Government body and the rules of Central Government servants were applicable to it. Hence, whatever stated by the witnesses of second party about their appointment are not true and correct.

13) In the evidence of CW1 at Exh.20 as well as CW2 at Exh.24, it is stated that to run the business of first party No.1, the first party No.1 had engaged the first party No.2 as the contractor. The said contractor Shri. Y. S. Shah, the first party No.2 has engaged his own workforce on which he had his full control and supervision through its own personnel. The first party No.2 has used to maintain their attendance, sanctioned leaves and paid their salaries, E.S.I. and provident fund. This shows that all these members of second party union were the employee's of the first party No.2 and not of the first party No.1. There was no employer and employee relationship between the first party No.1 and members of second party union.

14) In support of their contention, the first party No.1 has produced Labour Contract Agreement entered into between the first party No.1 and first party No.2 at Exh.C-18, the muster rolls, vendor payment sheets at Exh.C-19.

15) Going through the Labour Contract Agreement produced on record it is observed that the agreement was for the supply of employee's on contract basis. The wordings of Clause-10, 11 and 17 of this agreement shows that the entire burden of financial and other liability relating to the members of second party rest with first party No.2 and no relief whatsoever be granted against first party No.1.

16) The vendor payment sheets, muster rolls produced on record also indicates that the first party No.2 had used to pay salaries to the employee's engaged by it including the members of second party union and their employer was first party No.2 i.e. contractor Shri. Y. S. Shah.

17) Apart from documentary evidence, the first party has relied upon the following authorities :

i) Food Corporation of India and Others V/s. Presiding Officer, Central Government, (2008) II LLJ 434 PH, (2008) 149 PLR 101, wherein it is held that :

> *".... it was held that the only consequences was the penal provisions under Sections 23 and 25 as envisaged under the CLRA Act and that merely because the contractor or the employer had violated any provision of the Act or the rules, the High Court in proceedings under Article 226 of the Constitution could not issue any mandamus for deeming the contract labour as having become the employee's of the principal employer".*

ii) Employers, Management of Bhuli Township Administration of B.C.C. Limited V/s. Presiding Officer, Central Government Industrial Tribunal II and Another, reported in 2004-I-CLR-842, wherein Hon'ble Jharkhand High Court has referred the ratio laid down in Steel Authority's case that wherein Hon'ble Court held that :

> *"....at various stages there is involvement of the principal employer, and that neither the provisions of the Act create direct relationship of master and servant between the principal employer and the contract labourer nor can such relationship be implied, on issuing a prohibition notification under Section 10 (1) of Act.*
>
> *No master and servant relationship between principal employer and contract labour, under the Act-Air India case overruled-Labourers not entitled to regularisation".*

The ratio laid down in the above cited case laws are squarely applicable to the present facts and circumstances of this case because in present case the first party No.1 has successfully proved through documentary evidence that all the members of second party union are the employee of contractor and there was no employer and employee relationship between first party No.1 and these employee's.

18) Considering the aforesaid contentions and ratio laid down in cited case laws and the evidence produced by both parties on record, it is observed that the first party No.1 has successfully proved that the first party No.2 was the employer of members of second party union engaged by him with first party No.1 company. On these members of second party the first party No.2 have control and supervision in all respects. Thus, there was no employer-employee relationship between the first party No.1 and the members of second party union and thus they were not the employee's of first party No.1. On the contrary, the second party union was categorically failed to show that their members were the employee's of first party No.1. In this respect, no any concrete documentary evidences was produced by the second party union to show that there was an employer-employee relationship between the first party No.1 and the members of second party union. As against, the first party No.1 has produced cogent and concrete documentary materials on record which clearly shows that the first party No.2 the contractor is the employer of members of second party.

19) Moreover, apart from this discussion, I would like to note here that in present reference, the appropriate Government was the Central Government and this matter was referred by it to this court on 26/04/2007 for adjudication. Its schedule reads as :-

> *"Whether the termination of services of 20 workers (list enclosed) by M/s. Y. S. Shah, Contractor of Bharat Petroleum Corporation Limited, Pune is just and legal ? If not, what relief the concerned workmen are entitled to ?".*

20) From the wordings of schedule, it will be clearly manifests that the issue of the present reference before the court was *whether the termination of 20 workmen by M/s. Y. S. Shah, the contractor is just and legal*. This language of schedule itself indicates that the court has to decide the issue of illegal termination of 20 workman against M/s. Y. S. Shah i.e. the contractor (first party No.2) and not against the first party No.1 i.e. Bharat Petroleum Corporation. The first party No.1 was not the party to said reference. Therefore, this court cannot go beyond the term or scope of the reference referred by the appropriate Government.

21) In support of its contention the first party No.1 has relied on the case of ***Gopal V/s. Bharat Sanchar Nigam Limited, reported in LPA 408/2013 and CM APPL. 9309/2013, decided on 03/07/2014, wherein Hon'ble Delhi High Court referred the ratio laid down Mukand Limited V/s. Mukand Staff and officer, reported in (2004) 10 SCC 460,*** wherein it is held that :

> *"36. We, therefore, hold that the reference is limited to the dispute between the company and the workmen employed by them and that the Tribunal, being the creature of the reference, cannot adjudicate matters not within the purview of the dispute actually referred to it by the order of Reference".*

The ratio laid down in above cited case is squarely applicable to the present facts and circumstances of this case because the present reference deals about the termination of 20 workers in listed in Schedule-A against the first party No.2 i.e. Mr. Y. S. Shah, the contractor and the first party No.1 was not the party to the said reference. Considering the over all discussion and the ratio laid down in above cited case, I would like to answer the issue No.1 in negative.

AS TO ISSUES NO.2 to 4 :-

Issues No.2 and 3 are interlinked with each other hence they are discussed together.

22) In view of negative answer given on issue No.1, it is cleared that the members of second party union were not the employee's of first party No.1, hence, no question arises about their illegal termination by first party No.1. The schedule of reference itself says that *'whether all these members of second party union were illegally terminated by contractor Y. S. Shah (first party No.2) or not'*. This shows that illegal termination of these employee's by first party No.1 was not the issue. So, second party union cannot claim any relied against the first party No.1. Considering the over all discussion I inclined to answer the issues No.2 & 3 in negative. In the result, in answer to issue No.4, I proceed to pass the following order.

ORDER

1) This reference is hereby rejected.

2) No order as to costs.

Pune. DHANASHRI R. KHAMKAR, Presiding Officer

Date : 14/09/2017.

नई दिल्ली, 6 फरवरी, 2018

का.आ. 255.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह- श्रम न्यायालय, नागपुर पंचाट (संदर्भ संख्या 09/2013) प्रकाशित करती है जो केन्द्रीय सरकार को 02/02/2018 को प्राप्त हुआ था ।

[सं. एल-22013/01/2018-आईआर(सी एम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2018

S.O. 255.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (Ref. No. 09/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur, as shown in the Annexure, in the Industrial Dispute between the management of M/s. Westeren Coalfied Ltd., and their workmen, which was received by the Central Government on 02/02/2018.

[No. L-22013/01/2018-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/Appln./09/2013-14 **27/02.11.17**

DIARY

Party No. 1 : The Chairman-cum-Managing
Director, WCL, Coal Estate,
Civil Lines, Nagpur-440 001.

The Sub-Area Manager,
Western Coalfields Ltd.,
Silewara Sub-Area,
At & Post:- Silewara,
Tehsil: Saoner
Distt.- Nagpur (MS).

: Shri S. Sudhakarrao,
Enquiry Officer/ Group
Vocational Training officer,
Vocational Training Centre
At. Silewara colliery
Po: Silewara, Tah Saoner,
District: Nagpur.

V/s

Party No. 2 : Shri Milind Madhukar Bambal,
Engineering Assistant (Civil),
WCL, Patansawangi Coal Mines,
At & Po: Patansawangi, Tehsil:
Saoner, Distt. Nagpur (MS).

ORDER

Shri G.V.R. Sarma is present on behalf of the petitioner.

On behalf of the management, Shri S.S. Sokhi is present.

Both parties heard on pursis-IA No. 5 (application) dated 30.10.2017, in which applicant prays to withdraw the original application dated 14.02.2014. This application was filed U/s 13-A of the Industrial Employment (Standing Orders) Act, 1946. In this application, he prayed for to call the original records of the departmental enquiry and also prayed his application U/s 36 (4) of Industrial Dispute Act, 1947 must be allowed.

In IA No. 5, the petitioner prayed that in Hon'ble High Court in W.P. No. 6868/2013 was decided on 13.03.2015 in which petitioner shall be protected in terms of the full bench judgments as status of schedule tribes. He also pray that the petitioner complied the direction of the Hon'ble High Court, so he wants to withdraw his original application, which was filed U/s 13-A of the above fact.

On behalf of the management, Mr. S.S. Sokhi gave his written consent i.e. management have no objection to withdraw the case.

So, pursis (IA No. 5) is allowed with direction of withdrawn of the original application dated 14.02.2014.

ORDER

The application for withdrawal of the case is allowed. The case is treated as withdrawn. The application filed by the Party No. 1 for withdrawal of the case is made part of the order. The Party No. 2 is given the liberty to approach the appropriate forum for redress.

S.S. GARG, Presiding Officer

BEFORE THE HON'BLE PRESIDING OFFICER, CGIT, NAGPUR

Ref : Case No. CGIT/NGP/Appln. 09/2013-14

Between :

Milind Madhukar Bambal …Applicant

V/s.

The Management of Western Coalfields Ltd., Nagpur-
thorough its Chairman-cum-Managing Director & Other …Non-Applicants

PURSIS

In the above matter it is submitted that an applicant under Section 13-A of Industrial Employment (Standing Orders) Act, 1946 was filed by the above applicant before this Tribunal for application under interpretation of the certified Standing Orders of Western Coalfields Ltd. against the Disciplinary Action initiated by the Non-applicant employer against the Applicant Workman.

The Applicant workman has filed a Writ Petition bearing No. 6868/2013 in the High Court of Judicature, Bombay, Nagpur Bench Challenging the decision of the Schedule Cast/Schedule Tribe Scrutiny Committee, Nagpur.

The above writ petition was heard by the High Court of judicature at Bombay, Nagpur Bench, Nagpur along-with identical Writ Petition No. 1802 of 2014, 1503 of 2011, 2839 of 2013, 5178 of 2013, 5766 of 2013, 3476 of 2013 and 5892 of 2013 and decided through a common Order / judgment dated 13.03.2015. A copy of the judgment is enclosed.

The High Court of Nagpur Bench directed the Applicant petitioner to file written undertaking with the Registry of the court as well as with the employer i.e. Western Coalfields Ltd. within a period of 6 weeks from the date of the judgment stating that neither he nor his progeny shall claim any benefits and status as Schedule Tribe candidate employment of the petitioner shall be protected in terms of the full bench judgment cited in the common order of judgment dated 13.03.2015 of the petitioners.

Before the Hon'ble CGIT Nagpur

Reffred by

The Management do not have any objection on the applied has shifted on an application for with dew the Date

Hone' ble Authority may pleased take decision accordingly.

S. S. Sddn. (Mag. (P)

Si. S.A.

The applicant has complied the directives of the High Court of Nagpur Bench (Para No. 29 of the judgment) and written undertakings were filed by the applicant before the High Court as well as with the Non-applicants.

In view of the above facts and circumstances of the matter the above applicant workman prays that the present application may kindly be allowed to be withdrawn by the applicant and appropriate orders be passed.

G.V.R SARMA

Authorised Representative of the Applicant Workman Nagpur

Dated : 30/10/2017

नई दिल्ली, 6 फरवरी, 2018

का.आ. 256.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह- श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 16/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/02/2018 को प्राप्त हुआ था ।

[सं. एल-22012/29/2015-आईआर(सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2018

S.O. 256.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (Ref. No. 16/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur, as shown in the Annexure, in the Industrial Dispute between the management of M/s. Westeren Coalfied Ltd., and their workmen, which was received by the Central Government on 05/02/2018.

[No. L-22012/29/2015-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/16/2015-16 Date: 05.12.2017

Party No. 1 : The Area General Manager,
Western Coalfields Limited,
Nagpur Area, PO: Jaripatka,
Nagpur – 440014.

Versus

Party No. 2 : The Secretary,
Rashtriya Koyla Khadan Mazdoor Sangh
(INTUC), WCL, Nagpur Area Office Branch,
PO: Jaripatka, Nagpur – 440014.

AWARD

(Dated: 5th December, 2017)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, Koyla Shramik Sabha (HMS) for adjudication, as per letter **No. L-22012/29/2015- (IR(CM-II) dated 19.06.2015,** with the following schedule:-

"Whether the action of the management of Western Coalfields Ltd., Nagpur Area in withdrawing the advance increment as granted to Sh. M.T. Usman and Shri Abdul Sattar, are just, fair & legal? If not, to what relief the concerned workmen are entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due.

The party No.1 appeared through their advocates on 06.01.2016.

In spite of sufficient service of notice on the petitioner, none appeared on behalf of the petitioner. No statement of claim was also filed on 01.09.2017. However, in the interest of natural justice, the reference was adjourned to 02.11.2017 and 05.12.2017. Second notice was also sent for the date of 05.12.2017, which is served on the petitioner but the petitioner neither appeared nor filed any statement of claim. So, on 05.12.2017, the reference was closed and posted for passing of the award.

. It is well settled that whenever a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the party fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the said party and the party would not be entitled to any relief.

Judging the present case with the touch stone of the settled principles as mentioned above, it is found that the petitioner has neither appeared nor filed any statement of claim and as such, he is not entitled to any relief. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 6 फरवरी, 2018

का.आ. 257.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह- श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 21/2015) का प्रकाशित करती है जो केन्द्रीय सरकार को 05/02/2018 को प्राप्त हुआ था ।

[सं. एल-22012/28/2017-आईआर(सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2018

S.O. 257.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (Ref. No. 21/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur, as shown in the Annexure, in the Industrial Dispute between the management of M/s. Westeren Coalfied Ltd., and their workmen, which was received by the Central Government on 05/02/2018.

[No. L-22012/28/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI SHYAM SUNDAR GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/21/2017 Date: 19.12.2017

Party No.1(a) : The Sub-Area Manager,
Padmapur Open Cast Mines of WCL,
At Post: Padmapur,
Distt.: Chandrapur (M.S.)

Party No.1(b) : M/s. Senthil Enterprises, WCL Contractor,
Site at Padmapur Open Cast Mine of WCL
Post: Urjanagar,
Distt. Chandrapur (M.S.),

Versus

Party No.2 : Shri Prajot J Punekar and 10 others,
Durgapur Ward no.1, Durgapur,
Post: Urjanagar, Distt. Chandrapur (M.S.)

AWARD

(Dated: 19th December, 2017)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, Koyla Shramik Sabha (HMS) for adjudication, as per letter **No.L-22012/28/2017- IR(CM-II) dated 16.10.2017,** with the following schedule:-

"Whether the action of the management of WCL, Padmapur Open Cast Mine Chandrapur in terminating the services of Shri Prajot J Punekar and 10 other workmen through the Contractor M/s. Senthil Enterprises without giving terminal benefits denying reinstate in service to extend any relief is just, fair and legal? If yes, to what relief the concern workmen are entitled to?"

2. On receipt of the reference, the parties were issued on 23.10.2017 to file their respective statement of claim and written statement, by registered post with acknowledge due.

Shri D.B. Gondane appeared for the party No.1(a) and Shri Z.K. Khan advocate appeared for party no.1(b) on 28.11.2017. The Party no.1(b) filed preliminary objection regarding tenability of dispute.

In spite of sufficient service of notice on the petitioner, none appeared on behalf of the petitioner. No statement of claim was filed on 28.11.2017 and on the next date was given on 07.12.2017. Petitioner did not appear even today. So, case is closed for award.

It is well settled that whenever a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the party fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the said party and the party would not be entitled to any relief.

Judging the present case with the touch stone of the settled principles as mentioned above, it is found that the petitioner has neither appeared nor filed any statement of claim and as such, he is not entitled to any relief. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the petitioners. The petitioners are not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 6 फरवरी, 2018

का.आ. 258.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ईस्टर्न कोलफील्ड लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह- श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 116/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/02/2018 को प्राप्त हुआ था ।

[सं. एल-22012/23/1999-आईआर(सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2018

S.O. 258.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (Ref. No. 116/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol, as shown in the Annexure, in the Industrial Dispute between the management of M/s. Eastern Coalfied Ltd., and their workmen, which was received by the Central Government on 02/02/2018.

[No. L-22012/23/1999-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Shri Pramod Kumar Mishra,

Presiding Officer

REFERENCE No. 116 OF 1999

PARTIES : The management of Amritnagar Colliery of M/s. ECL

V/s

Sri Bijoy Muchi

REPRESENTATIVES :

For the management: Shri P. K. Goswami, Learned Advocate

For the union (Workman): None

INDUSTRY: COAL STATE : WEST BENGAL

Dated : 08.01.2018

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter NO. L-22012/23/99–IR(CM-II) dated 30.07.1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Amritnagar Colliery, M/s. ECL by not rectifying the date of birth of Sh. Bijoy Muchi, Conv. Belt Khalasi as 01.07.48 and forcefully superannuating him on 01.07.98 is legal and justified? If not, to what relief the workman entitled? "

1. Having received the Order No. L-22012/23/99–IR(CM-II) dated 30.07.1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No**. 116 of 1999** was registered on 18.08.1999 / 21.09.2001. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. Case called out. Shri P. K. Goswami, learned advocate appears on behalf of the management of Amritnagar Colliery of M/s. Eastern Coalfields Limited. None appears on behalf of the union / workman.

3. On perusal of the case record I found that the union / workman last appeared before the Tribunal on 31.12.2007 through their learned advocate, Shri Nirmalendu Ganguly. Since then the union / workman neither took any step nor appear before the tribunal for once. Registered notices were issued to the parties 20.02.2009 and 04.08.2016. So far 13 dates have been granted to the Union after 31.12.2007 but to no effect. It appears that neither the union nor the workman has any interest in contesting the reference. The reference is one of the oldest reference of this tribunal. It will not be wise to fix any further date to keep this old record pending without any fruitful result. As such the case is closed and accordingly a **'No Dispute Award'** is hereby passed.

ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 6 फरवरी, 2018

का.आ. 259.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स फूड कारपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह- श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 108/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/02/2018 को प्राप्त हुआ था।

[सं. एल-22012/250/1997-आईआर(सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2018

S.O. 259.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (Ref. No. ID 108/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad, as shown in the Annexure, in the Industrial Dispute between the management of M/s. Food Corporation of India and their workmen, which was received by the Central Government on 01/02/2018.

[No. L-22012/250/1997-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 25th January, 2018

Reference: (CGITA) No.-108/2004

(Old Reference (ITC) No.- 79/2008)

The District Manager,
FCI, Kalingam, Sabarmati,
Ahmedabad (Gujarat) ...First Party

V/s
Shri Ganpatbhai Dalabhai Parmar,
Kishannagar Society, Block 31,
DamiLimda, Ahmedabad (Gujarat) …Second Party

For the First Party : Shri C.S. Naidu Associates
For the Second Party : Shri Rughuvir Prashad Mali

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-22012/250/97–IR(CM-II) dated 23.07.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the demand for regularisation as direct labour with FCI of S/Sh. Khandubhai G. Solanki, Babubhai N. Parmar, Ganapabhai D. Parmar and Smt. Champaben K. who have worked as casual labours with Handling Contractors M/s Kandla Transport Co. and other contractors M/s FCI Depot, Sabarmati, Ahmedabad from Septemeber, 1987 onwards for 7 to 8 years, are justified? If yes, to what relief the workmen are entitled to?"

1. The reference dates back to 23.07.1998. After referring the matter by the Appropriate Government, the Court issued notice vide Ex. 2 to the respective parties and in pursuance to the same, parties to the reference appeared before the Tribunal and the second party filed the Statement of Claims Ex.3 and the Food Corporation of India appeared through its Advocate and filed its Written Statement vide Ex.8.

2. The Second party appeared through his representative Shri Raghuvir Prasad Mali and alleged in their Statement of claims Ex. 3 that they were working with the first party as per the details shown in the annexure attached to the statement of claims. They have also alleged that they were working as permanent employee of the Food Corporation of India, hereinafter, referred to as "first party". Their service records were clean and blotless. The first party, Food Corporation of India, a statutory body was established under the Food Corporation of India Act 1964. The first party is having go-down situated at Kaligam, Sabarmati where the second party workers, hereinafter, referred to as "workers" were working. The first party is mainly doing a work of collecting the grain in huge quantity and store in their go-downs. The second party workers were doing the work of loading and unloading the grain purchased and brought by the first party. They have further alleged that they were lastly working under the contractor named M/s Kandla Transport Corporation. Contractors were periodically changed and the second party workers remain unchanged and handed over to the new contractor as and when new contractor comes into the existence by way of new contract but they were not aware of any contractor. They were also not the employees of the contractor. They further alleged that the supervision and control over the second party workers always remained with the officers of the first party. They have further alleged that they have to take permission for taking the leave, any instructions regarding the work and in case anything needed to complete the job they have to ask to take instructions for the same to the officers of the first party. They have also alleged that contractors had not appointed them. They have further alleged that though they were employees of the first party but the first party demonstrated that they were the employees of the contractor to leave them to be exploited by the contractors and the first party. They have further alleged that somewhere in 1987 they have proceeded on strike about six months for the demand of their regularization. On account of strike of the workers, the work of the first party was totally collapsed. Consequently, the dispute was referred to National Industrial Tribunal and during the said judicial process, different High Courts and Supreme court gave certain directions to the National Industrial Tribunal and as per the aforesaid directions the Central Industrial Tribunal, Bombay held that those workmen who had worked under B.B. Yadav, Contractor between 28.01.1986 to March. 1987 be made regular by the Food Corporation of India. They have further alleged that they had worked under B.B. Yadav, Contractor and thereafter the said contractor replaced by M/s. Kandla Transport Co. ignoring the facts that second party had worked under B.B. Yadav, contractor but they were not made permanent and were terminated from their service without giving any notice pay or retrenchment compensation. They have further alleged that the first party was not having any registration of contractors and was also not having any license as required under the CLRA, Act. and the contract was sham and bogus and therefore, have prayed for declaring the contract as sham and bogus and to regularise them as direct labourers of the first party Food Corporation of India.

3. The First Party Food Corporation of India submitted the written statement Ex. 8 denying the averments made in the statement of claim as baseless. There was no contract between the workers and the first party Food Corporation of India. The first party used to appoint H&T contractors in its various depots for handling in transport of food, grains, sugar and gullies etc. The H&T contractors so appointed used to bring their own

workers to handle and transport work for the first party. On expiry of contract, new contractors were appointed through tenders and outgoing contractor used to leave the site with his labourers and new contractors enter into the shoes of the outgoing contractor with his own work force but sometimes the labourers of the outgoing contractors desert the previous contractor by joining the new contractor. Similarly sometimes the outgoing contractor deserts its labourers consequently the labourers so deserted take up new appointment with the incoming H&T contractor. But the first party Food Corporation of India remains unconcerned with these aforesaid developments and in such circumstances, the first party Food Corporation of India did not have any master-servant relationship with the workers of the contractors who so ever may be. The first party had no right of control over the contractors to employ the work force. Earlier one S.S. Parmar raised an industrial dispute wherein the appropriate government vide its letter no. 22012/174/95-IR (CM-II) dated 07.03.1996 and in the said reference, following award was passed:

"The workman was engaged by various handling and transport and contractors of food storage depot on casual basis and not by the management of Food Corporation of India, therefore, no dispute subsists between them and the management."

The first party has further submitted that the first party being the Public Sector Undertaking of the Government of India, has to follow the proper procedure of employment of its personnel's, therefore, the averments made in the statement of claim has no force and the second party workers are not entitled to any relief as prayed in the statement of claim.

4. The workers submitted numbers of documents vide list Ex. 17 which are mostly wage slips given to the concerned workers by the contractor M/s Kandla Transport Co. and the first party has submitted documents Ex. 26 to 145 concerning the License, EPF allotment letter to the Contractor M/. Kandla Transport Co., mostly abstracts of muster roll from September 1987 to October 1989, various forms and order of the Hon'ble Supreme Court etc.

5. The second party gave oral deposition of Babubhai Narsinhbhai Parmar vide of affidavit vide Ex. 16 wherein he, in his examination-in-chief, has reiterated the averments made in the statement of claim further stating that after termination of their service, new hands were recruited. He is unemployed and ready to resume duty. In his cross-examination, he has admitted that the first party had not given any appointment letter to the second party workers. He stated that he will produce the pay slip given by the first party. He denied that the contractor had ever appointed them.

6. Vide Ex. 18 another worker Ganpatbhai D. Parmar was examined in the matter and in his examination-in-chief, he has stated that he was appointed in 1987 and he was terminated on 30.10.1994. On 30.10.1994 all the four workers were terminated without giving any notice or any notice pay or retrenchment compensation. In his cross-examination, he has admitted that he is studied up to 2nd standard. He had not made application in writing. He was orally appointed. He has denied that he was not appointed by the Food Corporation of India. He has admitted that he was not given any written appointment letter and he had not made any complaint for not giving the appointment letter. He has admitted that the contractor had terminated them.

7. Vide Ex. 150 one Smt. Champaben K. Parmar was examined herself in the matter. In examination-in-chief, she has reiterated the averments made in the statement of claims and further stated that on 30.10.1994 she was orally terminated without any notice, notice pay, retrenchment compensation.

8. The first party examined one Budhmal Keshavlal Rahecha vide Ex. 5. In his examination-in-chief, he has stated that the first party is incorporated under the parliament Act and Semi-Government Corporation. For handling the transport work, no labourers were engaged by the first party. This work is carried out by the contractor. Contractors used to pay the wages to all the labourers. The first party has never paid salary to the second party workmen.

9. Considering the materials and evidences on record, the submissions of the parties and the terms of reference as formed by the appropriate government, the following issues arise:

   I. Whether the demand for regularisation as direct labour with FCI of S/Sh. Khandubhai G. Solanki, Babubhai N. Parmar, Ganapabhai D. Parmar and Smt. Champaben K. who have worked as casual labours with Handling Contractors M/s Kandla Transport Co. and other contractors M/s FCI Depot, Sabarmati, Ahmedabad from Septemeber, 1987 onwards for 7 to 8 years, is justified?

   II. To what relief, if any, the workers are entitled?

10. **Issue No. I & II**

As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lie on second party workers. From the pleadings of the second party in the statement of claims and written statement of the first party Food Corporation of India and evidences given by the respective parties, one thing that is clear that the second party workers were working with the contractor but admittedly the contractor has not been made

as a party in the reference. As per the statement of claims and oral evidence of the second party, the case of the second party is that they were appointed by the Food Corporation of India and working under the supervision and control of the officers of the Food Corporation of India. In the oral evidence they have stated that they have not seen the contractor. They have also stated that the contractors are changed but they continued in job. It shows that they are the workers of the contractor on the basis of the principle of estoppels. The second party has produced documents vide Ex. 17. The said documents are the wage slip given to the concerned workers by the contractor M/s. Kandla Transport Co. In the statement of claims as well as oral deposition, the second party witnesses have stated that their services were terminated by the contractor on 30.10.1994. They have admitted in their cross-examination that they were not given appointment letter by the Food Corporation of India. On the contrary, the first party case is that there was no master and servant relationship between first party and second party. They were working under the contractors. Contractors used to pay the salary to them. The witness of the first party has categorically stated that the first party had not engaged any labourer for handling and transport work. The said work was carried out by the contractors. The first party never paid salary to the second party. The first party submitted documents vide Ex. 24 and on perusal of the same, the names of the concerned workers were shown in the muster roll of the M/s. Kandla Transport Co. i.e. Contractor under whom they were working. The said list of documents vide Ex. 24 contains the Form 12 A, Form 2, Form 10 which are of Kandla Transport Co.. From the rival submissions and documents on record it is crystal clear that the concerned workers were the employees of the contractor and admittedly the contractors are not made party in the reference. As per the settled legal position on this ground alone, the reference is required to be rejected as the second party has not been made the contractor as necessary party in the present reference. Therefore the reference is bad for non-joinder of necessary party. The Hon'ble Apex Court in the case of Himachal Pradesh Housing Board V/s Ompal & Ors reported at 1987 (75) FLR 154, held that without holding that the termination of service of workmen was invalid , given the direction by the Tribunal for regularisation an payment of enhanced wages was illegal. The question of regularization would arise only if termination order found to be invalid. In the instant case the concerned workers are out of job and their terminations are not declared illegal by the competent court. So as per the pronouncement of the apex court judgment, the concerned workers are not entitled to get any relief as prayed in the statement of claim. The second party referred Harinandan Prashad V/s Employer I/R to management of FCI 2014-II-LLJ-54(SC), the concerned workmen were temporary workmen and directly employed by the Food Corporation of India but in the instant case concerned workers are admittedly not engaged by the Food Corporation of India and they were employed by the contractor and they were being paid by the contractor and their services were also terminated by the contractor, hence this judgment is not helpful to the second party.

11. Thus the reference is decided with the observation as under: "the demand for regularisation as direct labour with FCI of S/Sh. Khandubhai G. Solanki, Babubhai N. Parmar, Ganapabhai D. Parmar and Smt. Champaben K. who have worked as casual labours with Handling Contractors M/s Kandla Transport Co. and other contractors M/s FCI Depot, Sabarmati, Ahmedabad from Septemeber, 1987 onwards for 7 to 8 years, is unjustified and no relief can be granted to the second party workers."

12. The award is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 फरवरी, 2018

का.आ. 260.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिंगारेनी कोलियरीज कम्पनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह- श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 42/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/01/2018 को प्राप्त हुआ था।

[सं. एल-22013/01/2018-आईआर(सी एम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 6th February, 2018

S.O. 260.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (Ref. No. LC 42/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad, as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, which was received by the Central Government on 30/01/2018.

[No. L-22013/01/2018-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 20th day of December, 2017

INDUSTRIAL DISPUTE L.C. No. 42/2010

Between:

Sri Nallala Rajaiah,
S/o Posham,
C/o Smt. A. Sarojana,
Advocate, Flat No.G7,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad . …Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Kothagudem Area, Kothagudem.
Khammam District.
2. The Superintendent of Mines,
M/s. Singareni Collieries Company Ltd.,
5B Incline, Kothagudem.
Khammam District. … Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

Sri Nallala Rajaiah who worked as Badli Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondent M/s. Singareni Collieries Company Ltd., seeking to declare proceeding No. KGM/PER/2/1894 dated 27.6.2003 issued by the 1st Respondent as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

The Petitioner was initially joined the services of the Respondents' company in the year 1981 and got confirmed as Coal Filler in the year 1982. The Petitioner was regular to his duties till the year 2001. The Petitioner submits that due to Jaundice and other family problems he remained absent during the year 2002. While the matters stood thus, charge sheet dated 11.1.2003 was issued to the Petitioner by the Respondents alleging that the Petitioner absented from duty during the year 2002, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service vide order No. KGM/PER/2/1894 dated 27.6.2003. It is stated that during the course of the enquiry the Petitioner has categorically stated about his inability to perform his duties regularly during the year 2002, as it was only on account of his family problems and ill-health. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents' management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered 22 years continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. KGM/PER/2/1894 dated 27.6.2003 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 8.8.1981 as a Badli Filler. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the dates fixed for the enquiry and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondents were constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. The domestic enquiry conducted in this case was held valid and legal vide order dated 23.6.2011.

5. I have already heard both the parties under Sec.11(A) of the Industrial Disputes Act, 1947.

6. In view of the above facts, the points for determination are:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Nallala Rajaiah is legal and justified?

II. Whether the Petitioner is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **Point No.I**: During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to his illness and other family problems, the Petitioner could not be able to attend his duty sincerely. He was getting treatment in company's area hospital. Even in his show cause the Petitioner has mentioned the above facts but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing capital punishment. But the authority has not considered any of the submissions of the Petitioner, and has imposed capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated into service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Petitioner could not be able to be regular in his duty, and has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 50 years, he is now aged about 57 years, and is searching ways and means to provide bread and butter to his family members. The Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to the court at the age of 50 years to work under the Respondents. In such a circumstances, atleast one chance should be given to him for reinstatement into service in order to get all his terminal benefits. Admittedly several modes of punishment are enumerated in company's Standing Orders. But the management has selected to impose capital punishment. The Petitioner is a first offender and has worked for about twenty two years under the Respondent. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Nallala Rajaiah is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Nallala Rajaiah is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a

chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But in this case, the Petitioner has not come to the court soon after his dismissal of service. In the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

Proceeding No. KGM/PER/2/1894 dated 27.6.2003 issued by the 1st Respondent is declared as illegal and is hereby set aside. It is ordered that the workman Sri Nallala Rajaiah be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of six months. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 180 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during six months of service of the workman, he will be terminated from service without any further notice and enquiry and in case the workman completes the probation period of six months successfully he will be allowed to continue in service till the date of his superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 20th day of December, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 7 फरवरी, 2018

का.आ. 261.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, आयुक्त, एमसीडी एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 35/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2018 को प्राप्त हुआ था।

[सं. एल-42011/84/2011-आईआर(डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th February, 2018

S.O. 261.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (ID Case No. 35/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Commissioner, MCD and their workmen, which was received by the Central Government on 31/02/2018.

[No. L-42011/84/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT No. 1 DELHI

ID No. 35/2012

The President,
MCD General Mazdoor Union,
Room No.95, Barrack No.1/10, Jam Nagar House,
New Delhi

…Workman

Versus

The Commissioner
Municipal Corporation of Delhi,
Town Hall
Delhi

…Managements

AWARD

A reference under clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment vide letter No.L-42011/84/2011-IR(DU) dated 03.02.2012 for adjudication of an industrial dispute, terms of which are as under:

> ''Whether the action of the management of MCD in granting pay scale of Rs.240-400 with effect from 01.04.1979, revised pay scale of Rs.950-1500 with effect from 01.01.1986 and pay scale of Rs.3050-4590 with effect from 01.01.1996 to the workman Shri Shyoraj Singh S/o late Shri Lal Singh fitter is legal & justified? What relief the workman is entitled to?''

2. Claim statement was filed by Shri Shyoraj Singh, the claimant) with the averments that he was employed on daily wages and his services were regularized as fitter with effect from 01.04.1979 vide office order dated 23.1.1980 in the lower pay scale of semi skilled of Rs.210-270 instead of Rs.260-400 and also denied the skilled pay scale of Rs.950-1500 with effect from 01.01.1986 and pay scale of Rs.3050-4590 with effect from 01.01.1996. The claimant was posted in Ward No.191, Chirag Delhi under Zonal Engineering (Works), South Zone, Delhi and he superannuated on 31.07.2009 in the lower pay scale of semi skilled and management retained his wages fixed for skilled workman revised from time to time with effect from 01.04.1979. The claimant is also denied 1st and 2nd ACP due to his non-fixation of proper pay scale of skilled workmen. Management has adopted CPWD rules and regulations for the workmen posted n Engineering Wing of the management. Under the Central Pay Commission, fitters are classified as skilled workmen. Claimant is entitled to regular pay scale from the date of his regularization with effect from 01.04.1979. Hon'ble High Court in writ petition(C) No.3302/03 titled MCD Vs Ram Singh has held that the workmen employed with the management as fitters, carpenters, painters and masons are entitled to pay scale of Rs.260-400 instead of Rs.210-270. Finally, it has been prayed that the claimant may be granted pay scale of fitter as skilled workmen.

3. Written statement was filed by the management wherein it was averred that the management pleads that on facts, counter would be filed at the appropriate stage. However, since no such stage is provided by the law, following issues were framed by my learned predecessor vide order dated 16.08.2012:

(i) Whether management can claim that present proceedings should not be heard in view of SLP pending before Apex Court?

(ii) As in terms of reference

4. On July 12, 2013, an application was filed by the management for amendment of the written statement, which was allowed vide order dated 24.07.2013. Amended written statement was filed on behalf of the management wherein various preliminary objections, inter alia of reference being made without application of mind, espousal, non-service of demand notice, delay and laches, etc. On merits , it has been admitted that the workman was regularized on the initial/ entry post of Fitter in the pay scale of Rs. 210-270/- w.e.f. 01.04.1979. It is denied that the workman was entitled for

the pay scale of Rs.260-400 or Rs. 950-1500 with effect from 01.01.1986 or pay scale of Rs. 350-4590/- with effect from 01.01.1996. It is submitted that the claim of the workman for the pay scale of Rs. 260-400 (revised pay scale of Rs. 950-1500/-) is not justified on the main ground that there were two categories of the post of Fitter in the management/MCD i.e. Assistant Fitter/ Fitter & Fitter/ Senior Fitter. The post of Assistant Fitter/ Fitter was the initial/entry post and the post of Senior Fitter/ Fitter was the promotional post of the post of Assistant Fitter/ Fitter. The pay scale of Assistant Fitter/ Fitter in III CPC was Rs.210-270 and as regard to the post of Senior Fitter/ Fitter, the pay scale of III CPC was Rs. 260-400. As per the recruitment rules, the entry grade for the post of Fitter was Rs. 210-270 (revised pay scale Rs. 800-1150) and the pay scale of Rs. 260-400 was the pay scale for the post of Senior Fitter/ Fitter, which was the promotional post to the post of Assistant Fitter/ Fitter. The Claim of the workman for the pay scale of Rs. 260-400 (revised Rs. 950-1500) is not justified since this scale was of the post of Senior Fitter/ Fitter as per R.R. of the post. Further, the pay scale for the post of Assistant Fitter/ Fitter has been revised by the management by way of resolution no. 902 dated 05.03.2007 circulated vide office order no. 173 dated 09.05.2007 vide which both the categories of Assistant Fitter/ Fitter and Fitter/ Senior Fitter have been merged and created the post of Fitter in the pay scale of Rs.260-400 (revised Rs. 3050-4590) with effect from 01.01.1996. The pay scale of the workman has also been revised according to the said resolution with effect from 01.01.1996 and all the arrears have been paid to the workman. The workman has also been given the benefit of ACP after revision of the pay scale. The manageemnt has denied the other material averments made in the statement of claim. Finally it is prayed the present may be dismissed, being devoid of any merit and being misconceived.

5. On perusal of the amended pleading, following additional issues were settled by my learned predecessor vide order dated 21.08.2013:

(iii) Whether dispute has not acquired status of an industrial dispute for want of espousal by any trade union or considerable number of workmen in the establishment of the management?

(iv) Whether the dispute has not acquired status of an industrial dispute for want of service of demand notice on the management?

(v) Whether relief claimed has been frustrated on account of long delay and latches in raising the dispute?

6. Claimant in support of his case examined himself as WW1 and tendered in evidence his affidavit Ex.WW1/A as well as documents Ex.WW1/1 to Ex.WW1/5. Claimant also examined Shri B.K. Prasad as WW2, whose affidavit is Ex.WW2/A and he relied on documents Ex.WW2/1 to Ex.WW2/3. Management in order to rebut the case of the claimant examined Shri Rajender Kumar as MW1, whose affidavit is Ex.MW1/A. He has also relied on documents Ex.MW1/1 to Ex.MW1/3, Ex.WW1/M2, Ex.WW1/M3 and Ex.WW1/M5.

7. I have heard Shri B.K. Prasad, A/R for the claimant and Shri Rajeev Bhardwaj, A/R for the management.

Findings on Issue Nos. (i), (iv), (v)

8. All these issues are being taken up together for the purpose of discussion as they are inter-related and can be conveniently dispose of. It is clear from the averments made in the statement of claim that the claimant herein has raised a demand before the union regarding grant of pay scale of Rs.260-400 with effect from 01.04.1979 instead of Rs.210-270 revised from time to time. Further, Ex.WW2/1 is the registration certificate of the union headed by Shri B.K. Prasad. This certificate also clearly shows that MCD General Mazdoor Union has been registered under the Indian Trade Union Act, 1921 on 23.01.1992. There is nothing on record to show that the above union is not represented by substantial number of workmen. Since this objection has been raised by the management in its written statement, as such, it was incumbent upon the management to have brought some evidence on record to prove its plea. Hon'ble Apex Court in State of Bihar vs. Kripa Shankar Jaiswal (1961) Vol 2 SCR) observed as under:

> For a dispute to constitute an industrial dispute it is not a requisite condition that it should be sponsored by a recognized union or that all the workmen of an industrial establishment should be parties to it. A settlement arrived at in course of conciliation proceedings falls within section 18(3)(a) and (d) of the Industrial Disputes Act and as such binds all the workmen though an unregistered union or only some of workmen may have raised the dispute. The absence of notice under section 11(2) by the Conciliation Officer does not affect the jurisdiction of the conciliation officer and its only purpose is to apprise the establishment that the person who is coming is the conciliation officer and not a stranger.

9. It is clear from ratio of the above ruling that even minority union can also take up the matter of the workman under the Act and the dispute will become an industrial dispute when it is sponsored by such minority union. In the case on hand, as stated above, there is not even an iota of evidence to show that union headed by Shri B.K Prasad is not represented by majority of workman. There is also espousal and sponsorship certificate, which clearly shows that the managing committee has authorized Shri B.K. Prasad, President of the Union to sign the statement of claim on behalf of the claimant.

10. There is another document which shows that the Assistant Labour Commissioner has also taken up the matter of the claimant with the management. However, management failed to file written statement even before the ALC, resulting into failure of conciliation proceedings.

11. Equally merit-less is the plea taken by the management that the present dispute is no sponsored or espoused by substantial number of workmen. It is fairly settled position in law that even non-espousal of a case by the union would not deprive the workman of the relief to which the workman is otherwise entitled under the law. Such view appears to have been taken in the case of Nazrul Hassan Siddiqui vs. Presiding Officer, Industrial cum Labour Court Bombay (1997) Lab.I.C. 1807. In the above cited case also contention was raised by the management that the dispute does not fall within the definition of 'industrial dispute' and the same has not been referred or supported by substantial section of workmen. High Court rejected the plea of the management by placing reliance upon the decision of the Hon'ble Supreme Court in the case of Associated Cement Companies Ltd. (AIR 1960 SC 777), which it was observed as under:

> 'We have already noticed that an industrial dispute can be raised by a group of workmen or by a union even though neither of them represent the majority of the workmen concerned; in other words, the majority rule on which the appellant's construction of Section 19(6) is based is inapplicable in the matter of the reference under Section 10 of the Act. Even a minority group of workmen can make a demand and thereby raise an industrial dispute which in a proper case would be referred or adjudication under Section 20.'

12. In view of the ratio of the judgement discussed above, it is clear that espousal of a dispute by the union is not sine qua non for adjudication of such dispute in terms of Section 10 of the Act. Consequently, both these issues are decided in favour of the workman and against the management.

Findings on Issue No.(iii)

13. Admittedly, in the present case, reference has been made under Section 10 sub Section (2A) of the Act for adjudication. It is now well settled position in law that when a reference has been made for adjudication to the Tribunal or Labour Court, as the case may be, it is paramount duty of the court to decide the same on merits, irrespective of the pleas taken by the management. The dispute in the case in hand cannot be said to be stale for the simple reason that there is no previous adjudication of the matter between the parties from a competent court nor that there is inordinate delay in approaching this Tribunal by the workman.

14. It has been held by the Hon'ble Apex Court in the case of Raghubir Singh vs. General Manager (2014) Lab.I.C. 4266 = (2014) 10 SCC 301 that a reference for adjudication to the Industrial Tribunal can be made by the appropriate Government at any time and provisions of Limitation Act does not apply. There are clear observations in the above judgement that industrial dispute is to be decided by the Tribunal or Labour Court on merits, irrespective of the pleadings on limits. Therefore, ratio of law in the case of 'Nedungadi Bank Limited Vs. K.P. Madhavankutty & ors' (supra) and State Co-op Land Development Bank Vs. Neelam (supra) is not applicable to the case in hand as there is no inordinate delay nor workman is guilty of delay and laches in approaching the court. Hence this issue is answered in favour of the claimant and against the management .

Findings on Issue No. (ii)

15. It is evident from the pleadings of the parties that the claimant joined the management as fitter on muster roll and was regularized on 01.04.1979. Claimant has placed on record office order No.VIII/(123)/ECIV/AC(ENGG)/32/213/2052 dated 12.07.1982 Ex/WW1/2 wherein the management had implemented the award given by Board of Arbitration (JCM) revising the pay scale of skilled workers from 260-350 to Rs.260-260-400 with effect from 01.01.1973 notionally to the categories of skilled workers detailed in the order. Category No.4 is that of Fitter. Learned A/R for the management contended that as per the recruitment rules, the entry grade for the post of Fitter was Rs. 210-270/- (revised pay scale Rs. 800-1150/-) and the pay scale of Rs. 260-400 was the pay scale for the post of Senior Fitter/ Fitter, which was the promotional post to the post of Assistant Fitter/ Fitter. It was also argued that the pay scale of senior fitter was revised vide office order Ex.WW1/2. However, this plea of the management is without any merit as the office order Ex.WW1/2 mentions the post of fitter at serial No.4 and the scale of fitter has also been revised by this order. From this order, it is amply clear that there was only one post of fitter as on 12.07.1982 in the scale of Rs.260-350, which was revised to Rs.260-400.

16. As a sequel to my discussions hereinabove, it is held that Shri Shyoraj Singh is entitled to the pay scale of Rs.260-400 with effect from 01.04.1979, revised pay scale of Rs.950-1500 with effect from 01.01.1986 and pay scale of Rs.3050-4590 with effect from 01.01.1996. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Date : January 10, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 7 फरवरी, 2018

का.आ. 262.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, इंद्रप्रस्थ गैस लिमिटेड और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 178/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 14/11/2017 को प्राप्त हुआ था ।

[सं. एल-14012/07/2017-आईआर(डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th February, 2018

S.O. 262.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (ID Case No. 178/2017) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Indraprastha Gas Ltd. & Other and their workmen, which was received by the Central Government on 14/11/2017.

[No. L-14012/07/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NO.1, DELHI

I.D. No. 178/2017

Shri Vinod Kumar S/o Shri Banwari Lal,
R/o A-2/856, J.J. Colony Bhalaswa Dairy,
Delhi – 110 042 …Workman

Versus

1. The Management of Indraprastha Gas Ltd.
   Plot No.4, Community Centre,
   Sector 9, R.K. Puram,
   New Delhi – 110 022
2. The D.D. (Administration),
   Directorate of Naval Design,
   SSG, A-33, Kailash Colony,
   New Delhi – 110 048

3. M/s. Rajeev Security Equipments
   RZG – 124-A,
   Raj Nagar Part II, Palam Colony,
   Delhi – 110 042 …Management

AWARD

A reference was received from the appropriate Government vide letter No.L-14012/07/2017-IR(DU) dated 06.06.2017 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

> 'Whether the services of the workman Shri Vinod Kumar S/o Banwari Lal has been terminated illegally and/or unjustifiably from the establishment of India Nave, Dte. Of Naval Design, SSG, New Delhi by the management of M/s Rajeev Security Equipments and if so to what relief is he entitled and what directions are necessary in this regard? Whether correct wages has been paid to the workman Shri Vinod Kumar S/o Banwari Lal during his service period and if not, what relief is he entitled to and what direction in this regard?'

2. Both parties were put to notice and 25th October, 2017 was fixed for filing of claim statement by the claimant. The claimant appeared before this Tribunal on 25.10.2017 and stated at the bar that the matter has been amicably settled between him and the managements and that his claim stands satisfied. An application was filed by the claimant, which is marked as Exhibit C-1, stating that he has compromised the matter with the managements on 16.02.2017 and has received a sum of Rs.38,000.00 as full and final payment from the managements and that he does not want any further proceedings in the matter.

3. In view of the above, no controversy survives between the parties. Application Exhibit C-1 shall form integral part of the award. An award is, accordingly, passed. It be sent to the appropriate Government for publication, as required under Section 17 of the Industrial Disputes Act, 1947.

A. C. DOGRA, Presiding Officer

Dated : October 31, 2017

नई दिल्ली, 7 फरवरी, 2018

का.आ. 263.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, निदेशक, सीपीडब्ल्यूडी एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 81/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 14/11/2017 को प्राप्त हुआ था ।

[सं. एल-42011/61/2014-आईआर(डी यू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th February, 2018

S.O. 263.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (ID Case No. 81/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Director CPWD and their workmen, which was received by the Central Government on 14/11/2017.

[No. L-42011/61/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NO.1, DELHI

ID No. 81/2014

The General Secretary,
CPWD Mazdoor Union,
Room No.95, Barrack No.1/10,
Jam Nagar House, Shah Jahan Road,
New Delhi – 110 011 …Workman

Versus

The Director General (Works)
C.P.W.D.,
Nirman Bhawan,
New Delhi – 110 001 …Management

AWARD

A reference was received from Central Government under clause (d) of sub-section (1) and sub-section(2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether Shri Satpal S/o Shri Balbir Singh is entitled to be regularized as MLD with effect from 04.04.2003 with all consequential benefits from the date when the services of his juniors wee regularized with effect from 04.04.2003? If not, what directions are necessary in this respect?

2. It is averred in the statement of claim filed on behalf of Shri Satpal, hereinafter referred to as the claimant, that he was initially appointed as Motor Lorry Drivers (in short MLD) on daily wage basis on 30.08.1990. Later on, his services were terminated on 13.09.1993. However, he was reinstated by Central Government Industrial Tribunal cum Labour Court vide its award dated 30.04.2004. It is further averred that award passed by the Industrial Tribunal was further upheld by Single Judge as well as Division Bench of Hon'ble High Court and Hon'ble Supreme Court , upholding stand of the workmen that they are not employees of the contractor in the matter of Satpal Singh case. Further, the Courts have given findings that they were work order employees and are also daily rated workers.

3. Claimant herein is presently posted under Horticulture Division. M-314 and junior person, Shri Narayan Singh, who was initially appointed on muster roll with effect from 24.09.1991 was regularized with effect from 02.04.2003. Daily rated workers with the management have been getting wages in the minimum of pay scale plus all allowances but the workmen herein were denied the said payment, as a result of which the workmen have filed the application under

Section 33-C(1) of the Act and the said order has been challenged by the management, which is pending before the Hon'ble High Court of Delhi.

4. It is the case of the workmen that in the establishment of CPWD, daily rated employees are being paid equal pay for equal work and accordingly the claimants are also entitled for such wages from the management as per office memorandum dated 21.10.1990 as well as 28.01.1991 as skilled workmen. Office memorandum dated 21.10.1990 reads as under:

> 'References have been received from some of the Superintending Engineers/Executive Engineers etc. seeking clarification regarding method of computing daily rates payable to daily rated workers of CPWD on the concept of equal pay for equal work. It has been decided that the following formula may be adopted for the purpose of working out daily rates of wages of daily rated workers of CPWD.
>
> The total monthly emoluments admissible to regular counter parts of daily rated workers at the minimum of the respective scale of pay may be multiplied by number of days in a particular month after deducting there-from the days of absence plus the days of rest falling in the week/weeks in which the worker remained absent and the result may be divided by the number of days in the month. The figure so arrived will be the daily rate of wages of the worker.
>
> Illustration : Suppose number of days in a month is A, amount of emoluments in a particular month of a regular counterpart is B, number of days of absence of worker in a month is C and the number of rest days falling in the week/weeks on which the worker remained absent is D, then the formal for working out daily rats of wages of a daily rated worker would be as under:
>
> Daily rate of Wages = A – (C + D) x B
>
> **Note :** If a worker works for all the working days in a month availing the admissible rest days, he is entitled to full wages admissible at the minimum stage of the respective scale of pay, including DA/HRA/CCA admissible to his regular counterparts.'

5. It is further averred that as per settlement arrived at between the management and CPWD Mazdoor Union signed before the Chief Labour Commissioner on 02.12.2002 is binding on both the parties under Section 18 of the Act and as per this notification also, workman is entitled for equal wages. Finally, prayer has been made for regularization of services of both the workmen as MLD with effect from 04.04.2003 alongwith all consequential benefits.

6. Claim was demurred by the management taking various preliminary objections, inter alia of the claimant being awarded work order on contract basis, work order being awarded to contractor and not for engaging workers, claimant not approaching the court with clean hands and concealing of facts. On merits, it is averred that the claimant is not entitled to regularization as he was neither appointed through employment exchange nor through recruitment rules. He was merely issued work order on certain and terms and conditions to work for a certain period on specific rates with terms and conditions that the work order shall be terminated/suspended after issuing two days notice, which has been signed by the claimant herein. Workers engaged on muster roll/hand receipt were regularized as a policy matter and there is no specific policy/rule for regularization of contractor to whom work orders are issued. Claimant was never appointed as motor lorry driver but work order was issued in his name for driving water tanker till 14.07.1993. However, in compliance of award dated 04.01.2012 by Shri M.K. Gupta, learned Presiding Officer, Court No.9 Karkardooma Court complex, he was reinstated in the same capacity by issuing work order. Muster roll workers are issued first entry certificate by the officers engaging them by mentioning their Employment Exchange case number and muster rolls are issued from Division Office to mark attendance of muster roll staff. The wages are paid accordingly as per Section 25(d) of the Act wherein case of work orders, payments are made to contractor on contract bill forms with deduction in TDS etc. Hence, there is clear distinction between work order and muster roll. In Dharangdhra Chemical Works Ltd. vs State of Saurashtra and others, AIR (1956) SC 264, it is clearly stated that for any person to be a workman it is necessary he should be in the employment of the employer and merely a contract to do some work is not enough. Finally, prayer had been made for dismissing claim of the claimant.

7. Based on the pleadings of the parties, this Tribunal vide order dated 08.05.2015, framed the following issues:

(1) Whether the claimant is entitled to regularization with all consequential benefits, as alleged?

(2) Whether claim filed by the claimant is not maintainable?

8. Claimant, in order to prove his case against the management, examined himself as WW1 and Shri B.K. Prasad as WW2 and tendered in evidence their affidavits, Ex.WW1/A and Ex.WW2/A and also relied on documents Ex.WW1/1 to Ex.WW1/4 and Ex.WW2/1 respectively. Management in order to rebut the case of the claimant examined Shri Arun Kumar Tyage as MW1, whose affidavit is Ex.MW1/A. He also relied on documents Ex.MW1/1 to Ex.MW1/4.

9. I have heard Shri B.K. Prasad, A/R for the claimant and Shri Ashish Sharma, A/R for the management.

10. It is clear from pleadings on record that the claimant was initially appointed as MLD on daily wage basis with effect from 30.08.1990 and his services were later on terminated on 13.09.1993. Later on, he was reinstated on the basis of award dated 30.04.2004.

8. During the course of arguments, attention of this Tribunal was invited to office order Ex.WW1/1, which clearly shows that on the basis of the said office order, services of Shri Vijay Chand was ordered to be regularized ante-date as he joined management prior to joining of some of his juniors whose services were regularized. This also shows that date of entry of Shri Vijay Chand on the muster roll is 13.01.1989.

9. There is also office order Ex.WW1/2, which in fact deals with grant of equal pay for equal work to the daily rated workers and compilation thereof. It has been clarified in the above office order that total monthly emoluments admissible to regular counter parts of daily rated workers at the minimum of the respective scale of pay may be multiplied by number of days in a particular month after deducting therefrom the days of absence plus the days of rest falling in the week/weeks in which the worker remained absent and the result may be divided by the number of days in the month. The figure so arrived will be the daily rate of wages of the worker and in case daily rated workers worked for all the working days in a month including admissible rest days, he is entitled to full wages admissible at the minimum stage of the respective scale of pay, including DA/HRA/CCA admissible to his regular counterparts. There is also a memorandum of understanding Ex.WW1/3, which deals with the settlement vide which demands of the workmen were considered and allowed. In clause 5 of the above memorandum, it is clearly mentioned that resultant vacancies of workers working in the establishment of the management be filled up as per rules. Since matter was raised by the workmen through the union, as is clear from Ex.WW2/1 whereby General Secretary of the Union raised an industrial dispute regarding grievances of the workman herein, as such, same was later on referred under section 10 for adjudication by this Tribunal. Affidavit filed by the workmen, Ex.WW1/A is clearly on similar lines as the averments made in the statement of claim.

10. Hon'ble Supreme Court in the case of Surinder Singh vs. Engineer-in-Chief, CPWD (ATR 1986 SC 1976) decided on 17.01.1986, dealt with the question of equal pay for equal work in respect of daily rated workmen performing same duties which was being performed by their regular counterparts in the department. After discussing the ambit and scope of Article 14 of the Constitution of India, it was held that there should be equal pay for equal work of equal value. It makes no difference whether such workmen are employed against sanctioned post or not so long as they are performing the same duties. They must receive same salary and conditions of service must also be the same. Hon'ble Supreme Court also expressed anguish that most of the workers are kept in service on temporary basis as daily wage workers without their service being regularized, which is completely against the spirit of Article 14 of the Constitution of India.

11. Hon'ble Supreme Court in the case of Director General Works, CPWD vs Devender Singh considered the question of regularization as well as payment of equal wages for such daily rated workmen. Writ appeal filed against judgement dated 18.04.2004 of the Single Judge, whereby writ petition was filed by the management was dismissed and award passed by Industrial Tribunal No.2 was upheld. It was also the case of daily rated workers working on muster roll who were posted in various Divisions of the CPWD. In the said case, there is clear cut mention in para 9 of the judgment that when services of a junior has been regularized, there is no justification to deny such relief to workman who was senior to such worker., otherwise it would amount to discrimination, which is not permissible under the law, as has been held in Secretary State of Karnataka vs.Uma Devi (2006 4 SCC 1).

12. In the case on hand also it is clear from office order Ex.WW1/1 that Shri Vijay Chand, who was working on muster roll was regularized ante date 04.04.2003 and he was muster roll on 13.01.1989. In the present case, the claimant herein was engaged on daily wage basis on 30.08.1990. Since junior to him have already been regularized, as such, there is no reason or basis to deny regularization to such workmen. Hon'ble High Court in Devender Singh case(supra) referred to the decision of the Hon'ble Apex Court in the case of Bal Kishan Vs. Delhi Administration and observed as under:

> 10. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have 1452emoralizing effect in service apart from being contrary to Article 16(1) of the Constitution.

13. There is also judgement dated 04.04.2006 of the Hon'ble High Court which also deals with the same matter, pertaining to the case of Vijay Chand. In the said judgement also, Tribunal has passed an award in respect of workman Shri Vijay Chand on the premise that regularization was granted to equally placed other three workmen, and there was no reason to deny the relief of regularization to Shri Vijay Chand who was similarly placed like the other three workmen. As such, direction was made for considering the case of the workman for regularization. Thereafter, matter was again taken by way of SLP before the Hon'ble Apex Court in the case titled Union of India vs. Vijay Chand decided on 07.01.2011. Contention of the management was rejected and order of regularization by the High Court and that of the Industrial Tribunal was reaffirmed as under:

'In our view, the direction given by the Tribunal for consideration of the respondent's case for regularization of service, as was done in the case of other three similarly situated persons, was legally correct and justified and the High Court did not commit any error by refusing to interfere with the order of the Tribunal. In the facts and circumstances of the case, we do not consider it to be a fit case for exercise of jurisdiction by the court under Article 136 of the Constitution.

The special leave petition is accordingly dismissed.'

14. Lastly, reliance was placed on behalf of the workman in the case of Director General: Works, CPWD vs Karam Singh and others. It was a case where the claimants were also party to the said case. Contention of the management regarding denial of relief of regularization and equal wages to such workmen who were performing similar kind of duties like their regular counter parts, was rejected by the Hon'ble High Court of Delhi and the calculation of the wages in terms of office order dated 21.10.1990 applicable for daily rated workers was upheld. It was further held when a particular award has attained finality, such daily rated workers were direct employee and are entitled for equal wages, there is no question of entertaining such plea time and again. Workman was held entitled to the recovery of amounts due under the impugned recovery certificate as ordered by the Tribunal.

15. It is, thus, clear from detailed discussions made herein above, that the workman herein is a daily rated worker and is working regularly since his initial appointment. When services of juniors to the workman are regularized, there is no legal basis or justification in the wake of clear cut pronouncement made by the Hon'ble High Court of Delhi as well as Hon'ble Apex Court to deny regularization to the claimant herein from the date mentioned in the petition.

15. Perusal of the statement of Shri Arun Kumar Tyagi MW1 reveals that the claimant was appointed as Motor Lorry Driver against work order on 30.08.1990. This witness has admitted in having complied with the orders of the Hon'ble Courts as mentioned in his affidavit. The witness also admitted the claimant was reinstated on 02.08.2010 as per the orders of the Hon'ble Supreme Court and is working continuously since his reinstatement.

16. It is, thus, clear from detailed discussions made herein above, that the claimant herein was a daily rated workers and was working regularly since his initial appointment. When services of juniors to the claimant are regularized, there is no legal basis or justification in the wake of clear cut pronouncement made by the Hon'ble High Court of Delhi as well as Hon'ble Apex Court to deny regularization to the said claimant from the date mentioned in the petition.

17. Accordingly, it is held that Shri Satpal, the claimant herein, is entitled to be regularized as Motor Lorry Drivers with effect from 04.04.2003, the date when junior to him were regularized, with all consequential benefits. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated : October 30, 2017

नई दिल्ली, 7 फरवरी, 2018

का.आ. 264.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, दिल्ली मेट्रो रेल निगम और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 70/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/01/2018 को प्राप्त हुआ था।

[सं. एल-42012/191/2015-आईआर(डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th February, 2018

S.O. 264.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (ID Case No. 70/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Delhi Metro Rail Corporation & Other and their workmen, which was received by the Central Government on 01/01/2018.

[No. L-42012/191/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT No. 1, DELHI

ID No.70/2016

Shri Ms.Pooja Singh D/o Shri Jai Prakash Singh,
R/o C-1031/5, Street No.5,
Khajoori Khas, Delhi 110 094 …Workman

Versus

(i) Delhi Metro Rail Corporation
General Manager:Operations,
Metro Bhawan, Fire Brigade,
Barakhamba Road, Delhi 110 001

(ii) M/s Nuvision Commercial & Escort Services,
No.16,17, IK, Shiv Narayan Complex,
Behind Hanuman Mandir,
Near Sikandarpur Metro,
Gurgaon,
Haryana, 122 201 …Managements

AWARD

A reference under clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment for adjudication vide letter No.L-42012/191/2015-IR(DU) dated 13.01. 2016 for adjudication of an industrial dispute with the following terms:

> 'Whether the action of the management of NCES in not allowing the workwoman Ms.Pooja Singh, D/o Shri Jai Prakash on duty with effect from 10.11.2014 can be construed as termination without complying with the provisions of the Industrial Disputes Act, 1947? If yes, what relief the workman is entitled to?

2. Claim statement was filed by Ms.Pooja Singh (in short the claimant) claimant herein, averring therein that she was employed as Tom Operator under skilled category by Delhi Metro Rail Corporation (in short the management) through M/s Nuvision Commercial & Escort Services Commercial & Escon Services NCES (in short the contractor) on 13.11.2013 and her last drawn wages was Rs.7000.00 per month. The claimant was forced to deposit Rs.10000.00 as security money and Rs.5000.00 as registration fees at the time of her recruitment through demand drafts in favour of the contractor. After her illegal termination, in order to claim refund of the security money and registration fees, she was forced to deposit her identity card, appointment letter etc, , which amounts to unfair labour practice under the Act. Labour laws are being violated by the management as they are not being paid the minimum wages, EPF, ESI etc. Despite protesting many times, no action has been taken either by the management or the appropriate Government. No charge sheet or show cause notice was served on the claimant, no domestic enquiry was conducted against her, no retrenchment compensation or notice pay was paid to her, which is contrary to Section 25-F, G and H of the Act and amounts to unfair labour practice, an example of colorable exercise of powers vested in the managements. Demand notice was served on the claimant on 20.02.2015 but the management did not respond to the same. The claimant is unemployed as on date. Finally prayer has been made by the claimant to reinstate her with full back wages.

3. Written statement was filed on behalf of the contractors wherein various preliminary objections, inter alia of the claim being baseless and a flagrant abuse of the process of law, suppression of material facts, the claimant being unauthorizedly absent and abandonment of job, not approaching the court with clean hands etc. The contractor has denied the material averments contained in the statement of claim. Finally, it has been denied that the claimant was illegally terminated by the management on 10.11.2014. Finally, it has been prayed that the application may be dismissed with cost.

4. Statement of defence was filed by the management who have also taken certain preliminary objections, i.e. the claimant was never employed by the management and as such, no relationship of employer and employee exists between the management and the claimant, as such, she is not a workman as defined under section 2(s) of the Act. The claim is bad and incompetent in law as the claimant has raised the present dispute against two separate managements which are individual legal entities and the claimant has not specified as to from whom she is seeking relief. In fact, it has been admitted by the contractor that the claimant was engaged by them. Management has denied the other material averments contained in the statement of claim.

5. Rejoinder was also filed by the claimant herein wherein she has reiterated the stand taken in her statement of claim and denied the material averments continued in the statement of defence.

6. Based on the pleadings of the parties, this Tribunal vide order dated 08.12.2016 framed the following From perusal of pleadings of the parties, following issues are framed and thereafter the case was listed for evidence of the claimant:

(i) Whether termination of the claimant is illegal, unjustified and against principles of natural justice?

(ii) In terms of reference

7. In the meanwhile, it was stated by Shri Prince, A/R for the contractors M/s Nuvision Commercial & Escort Services that full and final settlement has been made to the claimant vide declaration Ex.C-1 stating she is unable to continue working with the contractors due to some personal reasons and that she has received an amount of Rs.17,600.00 vide cheque no.104170 dated 17.01.2015 drawn on Karnataka Bank towards full and final settlement of her claim. Now, the claimant does not have any surviving dispute with any of the managements and the matter has been disposed of amicably between the parties. Declaration Ex.C-1 shall form integral part of the award. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

A.C. DOGRA, Presiding Officer

Dated : December 20, 2017

नई दिल्ली, 7 फरवरी, 2018

का.आ. 265.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मैसर्स जय प्रकाश सुरक्षा एजेंसी, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 148/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 01.01.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर(डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th February, 2018

S.O. 265.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (ID Case No. 148/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the M/s. Jai Prakash Security Agency, New Delhi and their workmen, which was received by the Central Government on 01.01.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT No.1, DELHI

ID No.148/2016

Shri Ajit Pal Singh S/o Shri Randheer Singh,
R/o House No.742-D, Gali No.9,
Block F-3, Sagan Vihar,
Delhi – 110 062 …Workman

Versus

M/s. Jai Prakash Security Agency,
2198, Shop No.322, Plot No.3,
Wardheman Dwarkadhish Plaza, Sector 10,
Dwarka,
New Delhi …Management

AWARD

This is a complaint filed under Section 2-A of the Industrial Disputes Act, 1947 (in short the Act) by Shri Ajit Pal Singh (hereinafter referred to as the claimant). The claimant projected that a period of 45 days stood expired from the date of his filing a claim statement/application before the Conciliation Officer. Sub section (2) of section 2A of the Act, empowers a claimant to raise his dispute before this Tribunal in case of discharge, dismissal, retrenchment or otherwise termination of his services, without a dispute being referred by the appropriate Govt. under sub section (1) of section 10 of the Act. In view of these facts, this deemed reference was entertained by this Tribunal. It is averred in the statement of claim that the claimant was engaged as a Security Guard by M/s Jai Prakash Security Agency (in short the management) in February 2014 and his last drawn wages was Rs.11,620.00 per month. The management did not issue any appointment letter to the claimant. The management also does not provide legal facilities like ESIC, attendance card etc., so as to deprive them the mandatory legal facilities. His wages for the months from October 2014 to December 2014 have not been paid to him. On demanding his wages, the management terminated services of the claimant, which is totally illegal, unjustified and uncalled for. No memo or charge sheet was served on the claimant. It is also averred that the management obtained signatures of the claimant on several blank papers, vouchers etc. Finally, it has been prayed that the claimant may be reinstated with the management with full back wages and all consequential benefits.

2. Later on, the claimant filed a letter dated 04.08.2017 stating that he is no more interested in pursuing his case. Further, Section 10(1)(d) of the Act empowers the appropriate Government to refer an industrial dispute or any matter appearing to be connected with or relevant to such dispute, whether it relates to any matter specified in the Second or the Third Schedule of the Act for adjudication to the Tribunal constituted under the Act. When a dispute is referred, the Tribunal is required to adjudicate the industrial dispute. Therefore, it is apparent that the appropriate Government can refer an industrial dispute to the Tribunal, relating to any matter specified in the Second or the Third Schedule of the Act. However, for making such a reference, Government making the reference to the Tribunal should be appropriate Government for that industrial dispute. As pointed out above, the Central Government is not the appropriate Government for the dispute under reference. Consequently, it is clear that the reference of the dispute by the Central Government is incompetent and this Tribunal cannot invoke its jurisdiction to adjudicate this dispute. When Central Government is not the appropriate Government for making reference of the dispute for adjudication, this Tribunal cannot invoke its jurisdiction to adjudicate the issues on merits. Consequently, the Tribunal refrains its hands from adjudication with liberty to the claimant to approach the appropriate forum for adjudication of his dispute. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

A.C. DOGRA, Presiding Officer

Dated : December 20, 2017

नई दिल्ली, 7 फरवरी, 2018

का.आ. 266.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, निदेशक,उर्दू भाषा को बढ़ावा देने के लिए राष्ट्रीय परिषद् एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 129/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.01.2018 को प्राप्त हुआ था।

[सं. एल-42012/54/2013-आईआर(डी यू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th February, 2018

S.O. 266.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (ID Case No. 129/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Director, National Council for Promotion of Urdu Language and their workmen, which was received by the Central Government on 31.01.2018.

[No. L-42012/54/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.1 DELHI

ID No. 129/2013

Shri Adnan Siddiqui S/o Zaheer Alam,
R/o House No.1478, Ajmal Khan Street,
Balli Maran,
Delhi 110 006 …Workman

Vs.

The Management of National Council for Promotion of Urdu Language,
Through
The Director,
Farogh-e-Urdu Bhawan, FC-33/9,
Institutional Area, Jasola,
New Delhi 110 024 …Management

AWARD

A reference was received from Government of India, Ministry of Labour, vide letter No. L-42012/54/2013 – IR(DU) dated 13.09.2013 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, (in short, the Act) this for adjudication of an industrial dispute, terms of which are as under :

> 'Whether the employment of Shri Mohd. Adnan Siddiqui has been illegally or unjustifiably terminated by the management of NCPUL? To what relief the workman is entitled to and what directions are necessary in this respect?'

2. Both parties were put to notice and Shri Mohd. Adnan Siddiqui, the claimant herein has filed statement of claim wherein it is alleged that he was engaged by National Council for Promotion of Urdu Languages (In short the management of NCPUL) on 04.05.2005 as a sales attendant till 08.12.2010, when the Director of the management asked the claimant not to come from 09.12.2010. Claimant has passed Secondary examination from CBSE Board and diploma in Software Engineering. He is well versed in English typing and can shoulder higher responsibilities. Claimant has discharged his duties sincerely, skillfully and diligently to the satisfaction of the management while rendering his services for the management for more than 5 ½ years. He has worked for more than 240 days in each calendar year and his termination is totally illegal. During his service the claimant had approached the management several times for regularization of his services but the management kept on giving assurance but did not regularize his service. Claimant gave a representation on 09.02.2010, which was not considered by the management and this utter surprise, the management on 08.12.2012 asked him not to come from 09.12.2012. Action of the management has been alleged to be in violation of section 25F of the Act as neither one month's notice nor salary in lieu of such notice or any retrenchment compensation was paid to the claimant. Finally, the claimant has prayed for his reinstatement with full back wages as well as regularization of service.

2. Claim was contested by the management who filed statement of defence wherein preliminary objections have been taken. It is alleged that the management of NCPUL is not an industry within the definition of section 2(s) of the Act. Further, there is no relationship of employer and employee between the claimant and the management. In fact, claimant had applied for a job with M/s. Alert Enterprises on contract basis in June 2010 and joined services with the said company. Therefore, the question of his termination by the management does not arise when he was not an employee of the management. However, in para 3 of the preliminary objections, it is admitted that prior to July 2010 the claimant had worked intermittently on contract basis in the academic project Urdu/Arabic Correspondence course' . Thereafter, after the project work was availed by M/s. Alert Enterprises with whom the claimant joined in July 2010. It is also learnt from M/s. Alert Enterprises that the claimant has stopped coming for work on his own with effect from 08.12.2010. On merits, the management has denied all the averments made in the statement of claim.

3. Against this factual background, this Tribunal on the basis of pleadings of the parties, vide order dated 13.12.2013 framed the following issues:

(i) Whether there exists relationship of employer and employee between the parties?

(ii) Whether services of the claimant were allegedly terminated by the management on 08.12.2010?

(iii) As in terms of reference

4. The claimant, in order to prove his case against the management, examined himself as WW1 whose affidavit is Ex.WW1/A and he relied on documents Ex.WW1/1 to Ex.WW1/36. Management, in order to rebut the case of the claimant, examined Shri Mohd. Ahmad as MW1, whose affidavit is Ex.MW/A and he also relied on documents Ex.MW1/1 to Ex.MW1/8.

5. I have heard ShriMohd. Mustafa, A/R for the claimant.

Findings on Issue No.(i)

6. It has been specifically alleged by the management that there exists no relationship of employer and employee between the claimant and the management. Management has come with the specific plea that the claimant had joined services of M/s. Alert Enterprises in June 2010 and was working with the management since July 2010. However, in para 3 of the preliminary objections as well as para 1 of the reply on merits, it is admitted that prior to July 2010, the claimant had worked intermittently on in the academic project of the management on contractual basis and it was thereafter that the claimant joined services of M/s. Alert Enterprises.

7. It is clear from the statement of Shri Mohd. Ahmad, MW1, whose affidavit is Ex.MW1/A that he has admitted in his cross-examination that the claimant joined services of the management in 2005 as an attendant on contractual basis. However, he has not filed any document to show that the claimant was engaged on contractual basis. Minimum qualification as per deposition of this witness is 8th pass with knowledge of Urdu language. It is pertinent to note here that even in the written statement, management has taken the plea that the claimant was engaged initially by the management and was doing services intermittently. He has also admitted that regular permanent employees are not given technical breaks and it is given only to contractual employees. However, there is no agreement for technical breaks between the management and the employees. MW1 Shri Mohd. Ahmad has also admitted that no letter of joining was given to the claimant. It is pertinent to note here that the management has referred to contract with M/s. Alert Enterprises from July 2010, which was for a period of one year. However, he has not filed copy of the agreement with M/s. Alert Enterprises nor any official of M/s. Alert Enterprises has been examined by the management so as to prove valid execution of the agreement between the management and M/s Alert Enterprises. Claimant has also filed documentary evidence, which he as obtained under the RTI Act regarding his attendance marked directly with the management. In this regard, reference can be made to the extract of attendance register Ex.WW1/1 to Ex.ww1/29 which shows that the claimant has been in the employment of the management and this extract is duly signed by Shri Mohd.Ahmad, Junior Administrative-cum-Accounts Officer, who has supplied information to the claimant. Stand of the management that the claimant was doing service directly under M/s. Alert Enterprises is falsified by the documentary evidence adduced by the management as extract of attendance register Ex.WW1/1 to Ex.WW1/30 shows that he was directly in the employment of management. The claimant has also filed educational certificates Ex.WW1/31 and Ex.WW1/32 which shows that he has passed secondary school examination from Central Board of Secondary Education in the year 1999. He has also done computer course from Active Computer Academy as is evident from Ex.WW1/33. Thus, there is ample evidence on record that there is relationship of employer and employee between the claimant and the management. Thus, issue No.(i) is answered in favour of the claimant and against the management.

Findings on issue Nos. (ii) and (iii)

8. Both these issues are being taken up together for the purpose of discussion as they are inter-related and can be conveniently disposed off. Now, the vital question before this Tribunal is whether services of the claimant has been terminated by the management in an arbitrary and illegal manner. Reference made by the appropriate Government is also to this effect. There is nothing on record to suggest that before ordering termination of the services of the claimant, he was not given any notice in terms of provision of section 25F of the Act nor one month's wages in lieu of such notice was given to the claimant. There is also no proof of payment of retrenchment compensation to the claimant. Management has filed document Ex.MW1/1 which pertains to the information required in respect of Shri Mohd. Adnan Siddiqui, who is stated to be in the employment of M/s. Alert Enterprises. Ex.MW1/2 is copy of notice which shows that application was invited for preparing panel of eligible candidates for placement under management of NCPIL in various Academic Projects purely on contract basis. There is considerable force in the contention of the claimant that initially he was directly engaged by the management and later on his services were, on papers, transferred to M/s. Alert Enterprises without consent of the claimant, who was in fact doing services under supervision and control of the officials of the management. Ex.MW1/4 is the bio data of the claimant which is not in dispute since extract of the attendance register Ex.WW1/1 to Ex.WW1/30 clearly shows that during the year January 2008 to May 2010, he was directly in the employment of management of NCPUL. As such, plea of the management that he was engaged by M/s Alert Enterprises on contractual basis is contrary to the documentary evidence on record. Even as discussed above, Shri Mohd. Ahmad MW1 has also admitted in his cross-examination that the claimant was engaged in 2005 directly as attendant. If it is so, then the plea of the management that he was in the employment of M/s. Alert Enterprises cannot be accepted. Shri Mohd. Ahmad is a responsible official and is the Junior Administrative-cum-Accounts Officer of management of NCPUL whose statement is also corroborated by the extract of attendance register Ex.WW1/1 to Ex.WW1/30. No doubt, claimant, in his cross-examination has admitted that there was an advertisement for open recruitment in the year 2008 wherein all daily wagers/contract labour sat in the examination. He has also filed application before M/s. Alert Enterprises for employment in the year 2010 but this statement is not of much help of the management inasmuch as the management has admitted in the written statement as well as in evidence of MW1 Shri Mohd. Ahmad that the claimant has joined the management in the year 2005. Broadly, the claimant has put in more than five years in the service of the management.

9. Admittedly, in the present case there is no proof of issuance of notice under Section 25-F of the Act as required under the law before ordering retrenchment of service of the claimant nor there is any positive evidence on record to

show that one month's salary in lieu of such notice was given to the claimant under the law. The claimant is also entitled for payment of retrenchment compensation. There is long line of decisions of Hon'ble Apex Court as well as various High Courts that provisions of section 25F of the Act is mandatory that non-compliance of the above provisions would render action of the management to be totally illegal and void under the law. In the case of Anoop Sharma Vs Executive Engineer Public Health (2010) 5 SCC 497), while interpreting provisions of Section 25F of the Act, Hon'ble Apex Court has observed as under:

> 'It has been repeatedly held that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated. Clause (b) of Section 25-F casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for ever completed year of continuous service of any part thereof in excess of six months. It the workman is asked to collect his dues from the cash office the same is not considered sufficient compliance with Section 25-F. The workman cannot be retrenched without payment at the time of retrenchment, compensation computed in terms of Section 25-F(b). If the workman is retrenched by an oral order or communication, he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance with clauses (a) and (b) of Section 25-F of the Act.'

10. In the wake of legal position discussed above, the only conclusion which can be drawn on the basis of evidence on record is that action of the management in terminating services of the claimant herein is totally arbitrary and is held to be unjustified under the law.

11. Now, the residual question is whether the claimant is entitled for reinstatement with full back wages. Question as to whether the workman whose services have been dispensed with was terminated/retrenched in contravention of provisions of Section 25-F of the Act is no longer res integra as this point has been adjudicated by the Hon'ble Apex Court as well as various Hon'ble High Courts in a number of cases. In the case of Deepali Gundu Surwase vs. Kranti Junior Adyapak Mahavidyalaya (D.Ed) and others (2013 Lab.I.C. 4249), Hon'ble Apex Court held as under:

> 'Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.'

12. It is apposite to mention here that earlier Hon'ble Apex Court has articulated a view which is reflected in several judgments that if termination of a workman is found to be illegal, the relief of reinstatement with back wages would follow. However, in recent past, there is change in this trend and now in several cases a view has been taken that relief by way of reinstatement with full back wages is not automatic. Reference can be made in this regard to the case of Harinandan Prasad Vs. Employee in respect to management of Food Corporation of India (2014 7 SCC 190), Mulin Sharma Vs. State of Assam (2016) LLR 7125.

13. While dealing with reinstatement, the court has to keep in mind the nature of the post, duration of the engagement, nature of appointment, availability of the post, delay in raising industrial dispute and whether the appointment was in accordance with rules or not. Since claimant was not working against a regular post and is an able bodied person who must be doing something to make both ends meet, in such circumstances, this court is of the firm view that claimant herein is entitled to 50% of the back wages instead of full back wages as well as reinstatement with continuity of service is just and reasonable so as to meet the requirements of principles of natural justice as action of the management in the case on hand, is totally in violation of the provisions of Section 25-F of the Act. Accordingly, it is held that service of the claimant Shri Mohd. Adnan Siddiqui has been illegally terminated by the management of NCPUL. An award is, accordingly, passed. Let a copy of this Award be sent for publication as required under Section 17 of the Act.

A.C. DOGRA, Presiding Officer

Dated : January 10, 2018

नई दिल्ली, 7 फरवरी, 2018

का.आ. 267.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, अशोक होटल एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट

औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 28/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2018 को प्राप्त हुआ था।

[सं. एल-42011/171/2013-आईआर(डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th February, 2018

S.O. 267.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (ID Case No. 28/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the General Manager, Ashok Hotel and their workmen, which was received by the Central Government on 31/01/2018.

[No. L-42011/171/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT No.1, DEHLI

ID No.28/2014

The President
Ashok Hotel Mazdoor Janta Union,
Ashok Hotel Staff Quarter No. 48/49,
Chanakyapuri,
New Delhi – 110 021 …Workman

Versus

The General Manager
Ashok Hotel,
50-B, Chanakyapuri,
New Delhi – 110 021 …Management

AWARD

In the present case a reference was received vide letter No.L-42011/171/2013-IR(DU) dated 13.02.2014/18.02.2014 under clause (d) of sub-section (1) and Section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial disputes, terms of which are as under:

> 'Whether the contractual workmen Shri Ranjit Singh & others are entitled for regularization in the respective category of regular employees of the management of M/s Ashok Hotel? If no, what relief may the workmen entitled to ?'

2. Parties were put to notice and on appearance statement of claim was filed on behalf of the claimants (78 in number as mentioned in list annexed to letter No.ALC-II/8(72)/2013 dated 12.05.2014) with the averments that the case of the workmen was taken by Ashok Hotel Mazdoor Janta Union with the Conciliation Officer. The claimants are working in the maintenance enquiry of Ashok Hotel from the respective dates mentioned against their names in Annexure A in the premises of Ashok Hotel. For the purpose of making payment.

3. Regional Provident Fund Commissioner, on account of violation of PF Trust rules, cancelled PF Trust of Ashok Hotel vide letter dated 28.12.2010 as the management did not deposit the EPF of the employees in the Trust Account of Ashok Hotel The Hotel has taken the services of contractor for payment of wages through M/s Sparkling Enterprises prior from 19.07.2000 to 31.08.2006, M/s Beads Services from September 2006 to 31.10.2008, M/s Suraksha Security Service from November 2008 to 31.03.2012 and from April 2012 till date through M/s Mass Management Services.

4. Hotel, thus, has been changing the contractor from time to time. However, workmen are continuously working under the Hotel. Officials of the Hotel used to mark attendance of the claimants herein and also assigned work and job to the workmen. Officials of the Hotel also used to supervise their job and they were working under the administrative control of the Hotel. Hotel had also paid salary for overtime and used the contractor as middleman and contractors are not paying them even a single paisa to the workmen from their account. As per EPF Trust Rules, provident fund of the workmen should have been deposited in the EPF Trust of the Hotel as per para 14 of the Trust Rule as well as Hon'ble Delhi High Court order dated 28.10.2009 passed by Justice SN Aggarwal in WP(C) 13762/78/2004 but the management of Ashok Hotel was violating EPF Trust Rule. Due to violation of EPF Trust Rule, the Regional PF Commissioner cancelled the PF Trust of Ashok Hotel vide letter dated 28.12.2010. It is also alleged that certified standing orders of

Ashok Hotel clearly provide that the management can appoint permanent, temporary, badly, casual, provisional and apprentice and there is no provision in the certified standing order of Ashok Hotel to use the services of employees through contractor.

5. As per certified standing order of the Hotel, if a workman works for 12 months continuously, he is liable to be absorbed as a permanent hand subject to availability of vacancy under permanent cadre. Though permanent vacancies are available in the respective departments, yet the services of the claimant are nor being regularized on regular basis. The claimants have completed 240 days in each calendar year and as such they are entitled for regularization of their services in their respective category with the Ashok Hotel. Hotel is taking double duty from the claimants and paying single wages, which is violation of Payment of Wages Act, 1948 as well as Manual of ITDC. As per Contract Labour Act, 1970, claimants are entitled to same wages to which their regular counterparts are getting in the same Department/category on regular basis. But the Hotel is paying minimum wages to them as declared by Delhi Government from time to time, which is in violation of the Contract Labour Act, 1970. The job carried out by the claimants is of perennial nature and is carried out through contractors. Management of Ashok Hotel is not registered with Labour Department and the so called contractors are also having no licence from Labour Department; as such contract between the management of Ashok Hotel and the contractor are sham, camouflage and not genuine. Claimants are also not being given leaves, even on national holidays, as per provisions under Delhi Shops and Establishment Act. Management of Ashok Hotel paid them wages for off days during the period of contract but the management stopped paying the claimant on off days from April 2012 when contract was given to Mass Management Services, thus reducing their salary from April 12 onwards.

6. Matter regarding regularization of service with the management of Ashok Hotel in the regular pay scale of Rs.7320-17970 with effect from January 2007 was discussed in the working committee of the meeting of the union on 23.03.2013 and it was also discussed to take up the matter with the appropriate authority. Finally, prayer has been made that the Hotel be directed to regularize services of the claimants herein in their respective category in which they are working.

7. Claim was demurred by the management, who filed written statement thereto taking various preliminary objections. It has been alleged that the claim is not maintainable against the management as the claimants are not employees of the management but of the contractors. There is no cause of action of the claimant against the management. Answering management is neither necessary party nor an appropriate party for adjudication of the claim. Liability towards the claimants, if any, is that of the contractor who has engaged the claimants. On merits, management has denied most of the averments made in the statement of claim. However, it has been admitted that the claimants were employees of the contractors and were employed at some point of time under the contract awarded to the contractor by the management. The said contracts were awarded purely on temporary basis for a period of one year. As such, the claimants are employees of the said contractor and not that of the management. It has been prayed that that the claim may be rejected.

8. Rejoinder was filed on behalf of the claimants to the statement of defence filed by the management wherein the stand taken in the statement of claim was reiterated.

9. Against this factual background, this Tribunal on the basis of pleadings of the parties, vide an order dated 10.12.2015 framed the following issues:

(1) Whether the petition is not maintainable as workmen are not employees of the management?

(2) As in terms of reference.

10. Claimant in order to prove their case against the management examined Shri S.S. Upadhyay as WW1, whose affidavit Ex.WW1/A is on the same lines as the facts contained in the statement of claim. Shri Upadhyay also relied on documents Ex.WW1/1 to Ex.WW1/8. Claimants also examined Shri Manoj Singh Chauhan as WW2, Shri Pradeep Singh as WW3, Shri Manish Kumar as WW4, whose affidavits are Ex.WW2/A, Ex.WW3/A and Ex.WW4/A and they relied on documents Ex.WW2/1 to Ex.WW2/10, Ex.WW3/1 to Ex.WW3/9 and Ex.WW4/1 to Ex.WW4/6 respectively.

11. It is pertinent to mention here that after closure of evidence on behalf of the claimants, none appeared on behalf of the managements, as a result of which management was proceeded ex-parte. No evidence has been adduced on behalf of the management so as to rebut the case of the claimant and management has only filed written submissions, which has been taken on record.

12. I have heard Shri S.S. Upadhyay, A/R for the claimants.

Findings on Issue No.1 and 2

13. Both, Issue No.1 and 2 are inter-connected and as such they are being disposed off together. It is clear from perusal of pleadings that the claimants have come with the specific plea that they were engaged as clerk, electrician and helpers in the maintenance enquiry of Ashok Hotel from the dates mentioned in Annexure A and they have been working in unskilled category. Affidavit Ex.WW1/A of Shri S.S, Upadhyay as well as of other claimants clearly show that they have tried to support their case as mentioned in the statement of claim. It is further clear that the claimants worked regularly and continuously with the management. Shri S.S. Upadhyay, in his affidavit Ex.WW1/A has specifically alleged that he has worked in Ashok Hotel from 1960 to 1995 in various capacities. He is President of Ashok Hotel Mazdoor Janta Union and the claimants herein have approached the union that they are being paid salary

by the management of Ashok Hotel through contractor. Their case was discussed in the executive committee meeting of the union and on the basis of the resolution passed by the union on 23.03.2013. Demand notice Ex.WW1/2 was served upon the management. In para 6 of the affidavit, there is mention of the names of various contractors. In the affidavit, there is also reference to the standing orders of Ashok Hotel and Section 3 deals with classification of employees. It is also the case of the claimant the contractor was not duly licenced as required under the provisions of CLRA Act nor there is registration of Ashok Hotel with Labour Department, i.e. Central Government. Claimants have worked continuously in each calendar year for more than 240 days. There is also paid less wages than their counterparts who are performing similar duties.

14. It is clear from perusal of resolution Ex.WW1/1 that on 23.03.2013, meeting of union was held under the chairmanship of Shri S.S. Upadhyay, WW1, who was duly apprised of the demands raised by the claimant. Demand notice Ex.WW1/2 was also served upon the management and after failure of the conciliation proceedings, matter was referred to this Tribunal for adjudication as required under the law.

15. Shri S.S. Upadhyay, A/R for the claimant specifically referred to section 3 of the certified standing orders of Ashok Hotel and this section clearly provides as under:

Section 3 : Classification of Employees

a) Permanent

b) Temporary

c) Badlis

d) Casuals

e) Probationers

16. Standing orders also deals with the permanent as well as temporary employees. Section 5 clearly provides that each employee shall be issued identity cards free of cost and Section 15 deals with the punishments which can be awarded to the workmen.

17. During the course of arguments, Shri Upadhyay appearing on behalf of the claimants invited attention of this Tribunal to Employees provident Fund Organization order dated 28.12.2010 wherein establishment of the Trust, on account of failure of the management of Ashok Hotel to deposit the dues of the workmen in the said Trust within the time frame, resulted in its de-recognition. This order also shows that the Trust is incurring huge losses and management has not deposited PF amount as required under the law. It is further clear from perusal of letter Ex.WW1/7 and Ex.WW1/7A that the management of Ashok Hotel has been supervising duties as well as deputing workmen at various places as per their requirement. In order to enhance efficiency, management has also taken various steps. Officials of the management were also conducting surprise checks of the workmen who were performing duties in the premises of Ashok Hotel. In the letter Ex.WW1/10 there is mention of names of 10 employees Shri Amit, Shri Parveen, Shri Ranjeet, Shri Mohan Pal, Shri Gian Prakash, Shri Harish, Shri Sat Prakash, Shri Ranjeet Singh, Shri Sunil and Shri Raj Nath, who are alleged to be employees of M/s Sparkling Enterprises and in letter dated 03.11.2008 there is mention of names of 5 workers, S/Shri Khiyali Ram, Harshu, Hanif Khan, Sanju and Neeraj, who are alleged to be employees of M/s Beads Service group were found to be sleeping on duty.

18. Statement of the claimants, WW2 to WW13 are also on similar lines as that of WW1.

19. Now the primary question before this Tribunal is whether the workmen have completed 240 days in a calendar year since the time of their initial engagement and also whether the claimants herein are workers of the contractor or that of the management directly. It is pertinent to note here that no evidence worth the name has been adduced by the management in order to prove that the claimants herein were directly engaged by the contractor temporarily for a period of one year and in fact different contractors have been engaged by the management so as to get the work done from the claimants herein. Neither copy of the contract agreement has been filed by the management nor any of the contractors who are mentioned in the written statement, including M/s Mass Management Services has been examined by the management. In such circumstances, the stand of the management taken in the written statement to the effect that the claimants herein are employees of the contractor and not that of the management has not been proved by adducing any evidence worth the name. Whereas evidence adduced by the claimants herein are admittedly working in the premises of Ashok Hotel and this fact is duly established from the identity cards of the claimants WW3/1 to Ex.WW3/3, Ex.WW4/1 to Ex.WW4/3, Ex.WW5/1 to Ex.WW5/4, Ex.WW6/1 to Ex.WW6/2, Ex.WW7/1 to Ex.WW7/5, Ex.WW8/1 to Ex.WW8/9, Ex.WW9/3, Ex.WW9/4, Ex.WW9/6, Ex.WW10/1, Ex.WW1o/8, Ex.WW10/11, Ex.WW10/13, Ex.WW11/1 to Ex.WW11/5, Ex.WW12/2 to Ex.WW12/4, Ex.WW13/1 and Ex.WW13/2 . It is further clear from perusal of movement chart/duty roster Ex.WW4/10 to Ex.WW4/13, Ex.WW9/1, Ex.WW9/2, Ex.WW9/5, Ex.WW10/9, Ex.WW10/10 and Ex.WW10/14 that the claimants have been working in the establishment of the management of Ashok Hotel. There is also mention of the names of the claimants in this list alongwith their card number and it is clear from the record that the claimants have been doing work continuously with the management.

20. No doubt initial onus is always upon the workmen to prove that he is in the employment of a particular employer as this principle of law was affirmed by the Hon'ble Apex Court in the case of Nilgiri Co-operative Market Society Ltd.

Vs. State of Tamil Nadu (AIR 2004 SC 1639). However, as discussed above, management has not adduced any evidence so as to rebut the case of the claimant who have expressly stated in their respective affidavits that they have completed 240 days in a calendar year. In such a situation, this Tribunal has to draw adverse inference against the management and even otherwise, evidence on record is quite consistent to the effect that the claimants are doing regular work since the time of their engagement.

21. Now, the vital question before this Tribunal is whether the claimants herein are employees of the management or that of the contractor. As discussed above, management has not examined any of the contractors so as to prove that the claimants herein were engaged for a specific period by the management. Not only this, there is no documentary evidence, i.e. contract agreement filed by the management so as to prove the period of contract and the fact that work of helpers, electrician etc. was allotted to the contractor. To my mind, examination of the contractor as well as proving of contract documents was essential so as to hold that the claimants herein were employees of the contractor and not that of the management. Management has not filed any proof of its registration under Section 7 of the CLRA Act nor licence of the contractor as required under Section 12 of the LCRA Act has been proved on record. Non-examination of the contractor or any other officials of the management so as to prove the contract documents has dealt a crippling blow to the case of the management.

22. During the course of arguments, Shri Upadhyay heavily relied upon the case of Steel Authority of India vs. National Waterfront Workers Union, which has been subsequently followed and discussed by the various High Courts as well as Hon'ble Apex Court in all its subsequent pronouncements with the question of contract labour or whether the contract is sham, bogus or camouflage came up for consideration.

23. It is also not out of place to mention here that Constitution Bench of the Hon'ble Apex, while discussing the provisions of CLRA Act, and after discussing the entire spectrum of the case law on the subject in Para 125 of the judgement, it was held as under:

> (5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit there-under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.
>
> (6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

24. As noted above, SAIL case (supra) has made the position clear that even without the abolishment of contract labourers under Section 10 of the Central Labour (Regulation & Abolition) Act, 1975, it is open to the contract labourers to raise a dispute contending that the contract between the principal employer and the contractor is sham and nominal and if such a dispute is raised, the Industrial Tribunal has jurisdiction to decide the dispute. In other words, when the dispute is raised by the contract labourers that they were the direct employees of the principal employers, the Industrial Tribunal has to decide whether the contract between the principal employer and the contractor is sham and nominal and merely a camouflage. The Central Government Industrial Tribunal can grant relief to the contract labourers after finding that the contract between the principal employer and the contractor is sham and nominal. Further, Hon'ble Apex Court has clarified that the principle in Gujarat Electricity Board case continues to govern the filed and remedy of aggrieved workmen is to approach the Industrial Adjudicator for adjudication of such dispute that they are employees of the principal employer. This , decision in the SAIL case (supra) abundantly made it clear that abolition of contact labour under Section 10 of the CLRA Act and it is open to the contract labourers to raise a dispute by contending that the so called agreement is between the principal employer and private contractor is a mere camouflage, sham or bogus. Court in such a situation can also pierce the veil. It may be mentioned that this view has been followed by Hon'ble High Court by Division Bench of Hon'ble High Court in management of Ashok Hotel vs Workmen in WP(C) No.14828/2006 decided on 19.02.2013. In the said case also it was contended on behalf of the management that in the absence of any specific issue to the effect that contract between the principal employer and contractor is sham, camouflage or bogus etc, any finding by the Industrial Adjudicator regarding validity of such contract can be given. However, this contention of the management was out-rightly rejected by the Hon'ble High Court by observing as under:

> 'Learned counsel for the petitioners has strenuously contended that the respondent/workmen have nowhere stated that the contract was a sham and a camouflage and hence this issue of lifting of the corporate veil and

holding the contract to be sham could not be considered. The claim statement filed by the workmen states that the principal employer is the petitioner and M/s Sparkling Enterprises was working as a contractor in the hotel without any agreement illegally and unlawfully. Thus, even if the words sham and camouflage are not used, the so called illegal agreement between the petitioner and M/s Sparkling Enterprises has been challenged and the court is thus required to pierce the veil and find out the true position.

25. Therefore, a contrary view taken by the Hon'ble Single Judges of the High Court in some of the judgements cannot be followed in the face of the above decisions of the Division Bench. Thus, there is hardly any doubt that the proposition of law while considering the question whether contract labour is a contract employee or that of the principal employer or that of the private contractor. Well recognized test is (i) whether principal employer pays salary through contractor (ii) whether principal employer controls and supervises work of the employer . No doubt, in General Manager OSD vs Bharat Lal (2011) 1 SCC 635 it was held that merely because officer of the principal employer gave some instructions to employees of the contractor, that would not make him an employee of the principal employer. A bare perusal of the judgement in the above case would show that the management has also proved contract agreement and brought enough evidence on record to prove that salary was being paid by the contractor. Control and supervision though being exercised generally through officials of the management yet representative of the contractor were also performing such job from time to time. Factual matrix in the case on hand entirely depicts a different scenario inasmuch as the management has not brought any evidence worth the name on record to show that only general supervision was being done by officials of the management without overall control being that of the contractor.

26. It is clear from the above that the Industrial Adjudicator is mandatorily required to decide the question whether the contract agreement is valid was it was merely a ruse or a camouflage so as to escape compliance of beneficial legislation and thus deprive the workmen of various benefits irrespective of the fact whether any prohibition notification has been issued under Section 10 of the CLRA Act or not. Use of the words 'otherwise' in the above para of the judgement is clearly suggestive of the fact that even if there is any prohibition notification in terms of provisions of Section 10 of the CLRA Act, still the Industrial Adjudicator will have to consider the question whether the so called contract by the principal employer, i.e. the management with a private contractor has been interposed on the ground of having undertaken to produce any given result in the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations. Since in the case on hand, management has not produced any contract document nor examined any official so as to prove the said documents, as such, this Tribunal is not even in a position to ascertain the terms and conditions of the contract so as to uphold the plea of the management that the claimants herein are employees of the contractor and not that of the management.

27. This Tribunal while deciding the status of the claimant herein is to keep in mind that the claimants have been working in the establishment of Ashok Hotel for the last several years and they area also performing job of regular or perennial nature. Hon'ble Apex Court in a number of judgements has strongly deprecated the practice of engaging contract labour where work is regular or perennial in nature. Moreover, this Tribunal cannot ignore the fact that provisions of Act is primarily meant to ameliorate the conditions of service of the workmen and the Act being a social and beneficial legislation is required to interpreted in such a manner so as to serve the cause of the workmen who are in service for the last several years. The court is pained to observe that a very strange kind of practice is being followed by the managements, wherein workmen have been performing their duties for the last several years and such employees are shown on paper to be in the employment of sub-contractors and such contractors, are changing from time to time and the so called contractors are not engaging their own labour on the spot and the fact of the matter is that such employees who are already working in the establishment are being shown to be working in the employment of such different contractors who have not even seen faces of such employees. Thus, these contractors are virtually name lenders without knowing anything about contract labourers who are performing their work on the directions of the officials of the management. By no stretch of reasoning such employees can be termed to be in the employment of the contractor solely on the ground that salary of such employees is being paid through such contractors or the amount is being credited in their bank account. In order to determine the jural relationship of employer and employee, there are other vital factors which are required to be proved by the management who has come with the plea that such contract employees are in fact employees of the contractor and not that of the management. To prove such a plea, filing of contract agreement and examination of contractor or official of the management is necessary.

28. During the course of arguments, reference was also made to case of Uma Devi (2006) 4 SCC 1) which is normally relied upon from the side of the management. It is necessary to point out here in the said case provisions of the ID Act or CLRA Act were not directly involved and the primary issue before the Constitution Bench in the said case was regarding fate of irregular and illegal appointments who have been virtually taken in service throwing all norms to the winds and engaging through back door. It has been made clear in Durgapur Casual Workers Union vs Food Corporation of India (2015) 2 SCC 786) as under:

> 'Uma Devi (2006) 4 SCC1 has not overridden powers of the Industrial and Labour Courts in passing appropriate order, once unfair labour practice on the part of the employer was established. In the instant case, workmen concerned were working as contract labour under the contractor in the rice mill of the Corporation. The contract system was terminated and the rice mill was closed in the year 1990-91. The effect was termination of the services of the workmen. They were, thus, entitled to employment when the employer proposed to take into his employment any person, in view of Section 25-H, ID Act. Under Section 25-H, the

retrenched workmen who offer themselves for employment shall have preference over the other persons. It was for the said reason that the workmen were employed by the Corporation.

The workmen who were retrenched were rightly taken in the services of Corporation. Admittedly, no plea was taken by the Corporation either before the State Government or before the Tribunal that the initial appointment of workmen were illegal or they were appointed through back door means.'

29. In the case on hand also, management has not come with the specific plea that engagement of the claimants herein was illegal or that they were engaged in an illegal manner without knowing about the procedure. Therefore, reliance placed in the written submissions upon Uma Devi case (supra) is not of any help to the case of the management. Net result of the discussion is that the claimant herein are not employees of M/s Chauhan & Company and they are held to be in the employment of Ashok Hotel.

30. Now the residual question is whether such employees are entitled for regularization. There is evidence on record that the post of helpers, electricians etc. upon which most of the claimants are working from time to time are falling vacant and claimants herein are not being considered for regularization against such posts. It is made clear that in case claimants herein are fulfilling basis qualification or criteria meant for regularization upon such posts, in that situation management is legally bound to consider the claimants herein for the purpose of regularization. This Tribunal cannot ignore the fact that section 3 of the standing orders of Ashok Hotel, classification of employees in five categories and there is no mention of contract labour in such section. Therefore, engagement of contract labour is required to be discouraged, being against provisions of Standing Orders of Ashok Hotel. Accordingly, it is held that the claimants are entitled to be considered for regularization in accordance with rules and regulations of Ashok Hotel from the date when such similarly situated employees have been made regular by the management. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated : January 25, 2018

नई दिल्ली, 7 फरवरी, 2018

का.आ. 268.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, कार्यकारी निदेशक (एचआर), सेंट्रल इलेक्ट्रॉनिक्स लिमिटेड एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 69/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2018 को प्राप्त हुआ था ।

[सं. एल-42011/226/2015-आईआर(डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th February, 2018

S.O. 268.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (ID Case No. 69/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Executive Director (HR), Central Electronics Ltd. and their workmen, which was received by the Central Government on 31/01/2018.

[No. L-42011/226/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. DELHI

ID No. 69/2016

The General Secretary,
CEL Employees Union (REgd.)
4, Industrial Area, Sahibabad,
Ghaziabad,
Uttar Pradesh 201 010 …Workman

Vs.

The Executive Director (HR),
Central Electronics Limited,
4, Industrial Area, Sahibabad,
Uttar Pradesh – 201 010 …Management

AWARD

Consequent upon receiving of reference from Government of India, Ministry of labour, vide letter No. L-42011/226/2015 – IR(DU) dated 07.01.2016 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, (in short, the Act) this Tribunal is required to adjudicate an industrial dispute, terms of which are as under :

> 'Whether the management of CEL is justified in holding the implementation/ revision of wage structure as agreed upon and payment of arrear due since 1997 & 2007 in the barb of financial constraints? If not, what should be time limit for implementation and payment of arrears?

2. Claim statement was filed by the claimant union averring that the said union is a registered trade union. There is a practice of wage revision in the management every tenth year. One wage revision took place in 1997 and the next in 2007. In the wage revision of 1997 which was effective from 01.01.1997, arrears for the period 01.01.1997 to 31.05.2004 were not paid. In the wage settlement effective from 01.01.2007, the same was implemented with effect from 01.10.2010. No arrears were paid for the period January 2007 to September 2010. The management has shown outstanding arrears of Rs.6,19,92,000 for the period January 1997 to March 2000 and Rs.19.06 crore for the period January 2007 to September 2010, in the annual report and the same would be payable as and when the company earns profit. In the wage revision effective from 01.01.1997, management had agreed to give service weight-age to the workmen and under this head, a specific amount is paid to the workmen according to the length of service rendered . One component of basic wage is added in the revised basic wage is added to revised basic pay. The various admissible allowances are paid to the workmen on the revised basic pay. The next wage settlement signed effective from 01.01.2007 was signed on 23.12.2010. However, the same was implemented with effect from 23.12.2010. Finally it has been prayed that arrears towards wages be paid with 18% interest, direct the management to pay 'service weightage' to all eligible employees with effect from 01.10.2010, pay difference of employers contribution to PF, pay difference of HRA and leave encashment to all eligible employees (including retired employees) with effect from 01.10.2010, pay difference of gratuity to all employees who retired after 01.10.2010.

3. Claim was resisted by the management by raising various preliminary objections, inter alia of the case being espoused properly, non filing of list of employees segregating the workmen from executive cadre, mis-joinder of parties, estoppels in view of clause 27.3 of MOU, service weightage being beyond the scope of reference, ability of the management to pay, claim being time barred and being not maintainable etc. The management has denied the other material averments contained in the statement of claim.

4. Rejoinder was filed by the claimant union wherein the stand taken in the claim statement was reiterated and the averments made in the written statement were denied.

5. Based on the pleadings of the parties, this Tribunal vide order dated 28.08.2017, framed the following issues and the case was listed for evidence of the claimant:

(i) Whether the reference is not legally maintainable in view of the various preliminary objections?

(ii) In terms of reference

6. However, in the meanwhile, the case was finally amicably settled vide settlement Agreement Ex.C-1, Ex.C-2 and Ex.C-3, which are duly signed by both the parties, who have admitted their signatures before this Tribunal. In view of the settlement Ex-C-1, Ex.C-2 and Ex.C-3, there remains no grievance between the parties. The claim now stands settled vide settlement agreement Ex.C-1, Ex.C-2 and Ex.C-3, which shall form integral part of the Award. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated : January 25, 2018

नई दिल्ली, 7 फरवरी, 2018

का.आ. 269.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, अध्यक्ष और प्रबंध निदेशक, भेल और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 213/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2018 को प्राप्त हुआ था ।

[सं. एल-42011/80/2017-आईआर(डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th February, 2018

S.O. 269.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (ID Case No. 213/2017) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Chairman and Managing Director, BHEL & Others and their workmen, which was received by the Central Government on 31/01/2018.

[No. L-42011/80/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NO. 1, DELHI

ID No. 213/2017

The President,
Delhi Multi Storey Building Employees Congress,
C/o Steel Authority of India Ltd.,
18th Floor, SCOPE Minar,
Laxmi Nagar,
Delhi – 110 092 …Workman

Versus

1. The Chairman and Managing Director,
   Bharat Heavy Electronic Limited,
   BHEL House,
   Siri Fort, New Delhi 110 049

2. The Managing director,
   Oynx Management Services Pvt. Ltd.,
   C/o Bharat Heavy Electricals Ltd.,
   BHEL House, Siri Fort,
   New Delhi – 110 049

3. The Managing Director,
   M/s Aroon Aviation Services Pvt. Ltd.,
   C/o Bharat Heavy Electricals Ltd.,
   BHEL House, Siri Fort,
   New Delhi – 110 049 …Management

AWARD

Central Government, vide letter No.L-42011/80/2017-IR(DU) dated 17.07.2017, referred an industrial dispute to this Tribunal for adjudication, terms of which are as under:

"Whether the demand of the union for payment of bonus at rate 20% of annual wages for the year 2015 and onwards to the workmen engaged through the contractor(i.e. M/s Aroon Aviation Services Pvt. Ltd. for the

priold January to June 2015 and M/s. Oynx Management Services Pvt. Ltd. for the period July 2015 onwards) in the establishment of BHEL at Lodhi Road, New Delhi is legal and/or justified and in any case at what rate the workmen must be paid bonus and what relief are the workmen entitled to and what directions are necessary in this regard?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, the claimant union opted not to file their claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the claimant union as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant union as well as the managements. Despite service of the notice, the claimant union opted to abstain away from the proceedings. No claim statement was filed on their behalf. Thus, it is clear that the claimant union is not interested in adjudication of the reference on merits.

4. Since the claimant union neither put in its appearance nor have they lead any evidence so as to prove their cause against the management, as such, this Tribunal is left with no alternative but to pass a 'No dispute/claim' award. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated : January 15, 2018

नई दिल्ली, 7 फरवरी, 2018

का.आ. 270.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, आयुक्त, ईडीएमसी एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 82/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2018 को प्राप्त हुआ था।

[सं. एल-42011/147/2016-आईआर(डी यू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th February, 2018

S.O. 270.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (ID Case No. 82/2017) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Commissioner, EDMC and their workmen, which was received by the Central Government on 31/01/2018.

[No. L-42011/147/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NO.1, DELHI

ID No. 82/2017

The President,
MCD General Mazdoor Union,
Room No.95, Barrack No.1/10,
Jam Nagar House,
New Delhi - 110 011 …Workman

Versus

The Commissioner,
East Delhi Municipal Corporation,
Udyog Sadan,
Near Patparganj Industrial Area, Shahdara,
Delhi – 110 092 …Management

AWARD

Consequent upon receipt of reference from the Ministry of Labour and Employment vide letter No. L-42011/147/2016/IR(DU) dated 05.04.2017 under clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947(in short the Act), this Tribunal is required to adjudicate an industrial dispute, the terms of which are as under:

> 'Whether Shri Chatar Pal S/o Shri Rajpal is entitled to be appointed on compassionate grounds with effect from 13.05.2010 as regular field worker 'Beldar' instead of Muster Roll Field Worker(Beldar) if so, to what relief is the entitled and what directions are necessary in this respect?

1. Claim statement was filed on behalf of Shri Chatar Pal, the claimant with the averments that he is presently working under East Delhi Municipal Corporation, under Shahdara South District in Circle No.37 of Malaia Wing of Municipal Corporation on compassionate grounds on muster roll instead of regular worker (Beldar). His father, late Shri Rajpal, a regular employee, expired on 17.03.2007 leaving behind five members of his family. The claimant was employed as malaria worker on muster roll on 13.05.2010 instead of regular malaria field worker, which action of the management is unfair as well as illegal. As such, management exploited the claimant. The management follows the policy of Government of India/Government of NCT of Delhi. Finally, it has been prayed that that regular pay scale with proper grade pay in the category of Field Worker as semi skilled worker be granted to the claimant from the date of his appointment on compassionate grounds.

2. Notice was sent to the management by registered post on 01.05.2017 calling upon it to file its written statement on or before 12.06.2017. Neither the postal article was received back nor was it observed by the Tribunal that postal services remained affected from 14.05.2013 till 19.06.2013. Therefore, the Tribunal presumed that notice sent by registered post was served upon the contractor. None appeared on behalf of the management despite affording two more opportunities. Hence, management was proceeded ex-parte on 13.10.2017.

3. Claimant, in order to prove his case, examined Shri B.K. Prasad as WW1, whose affidavit is Ex.WW1/A. He also relied on documents Ex.WW1/1 to Ex.WW1/4. None appeared on behalf of the management to rebut the case of the management.

4. I have heard Shri B.K. Prasad, A/R for the claimant.

5. The only issue before this Tribunal is whether the claimant is entitled for relief of compassionate appointment. Admittedly, the claimant herein is the son of the deceased employee. It is apparent from perusal of record that they have filed application before the management for suitable appointment. In such circumstances, now the only question which requires to be considered by this Tribunal is whether they are to be granted employment as per the existing norms/policies. In this regard, learned A/R for the management invited attention of the court to the Establishment manual which clearly provides that dependents for regular Government servants are to be considered for compassionate appointment.

6. Hon'ble Apex Court in the case of DDA vs, Sudesh Kumar (2009) III SC 96 again dealt with the same question. In the said case, employee was working in DDA and expired on 03.04.1990. His widow applied for appointment of her son on compassionate grounds with DDA. The application was rejected on the ground that at the time of the death of late Shri Rajender Kumar, he was working on work charge post and he had no right of employment with DDA. However, Hon'ble High Court did not find any merit in the submission of the management and contention of the management that matter is also not even covered by industrial dispute was rejected with equal vehemence by the court, by holding as under:

5. We find no merit in the submission of the learned counsel appearing for the appellant. The term 'industrial Dispute' is defined under section 2 (k) of the Act, which reads as follows:

> '2 (k) Industrial Dispute means any dispute between employers and employers or between employers and workman or between workman and workman which is connected with the employment or non employment or the terms of employment or with the conditions of labour of any person.

6. Section 2(k) came for consideration before the Supreme Court in Workmen of Dimakuchi Tea Estate vs. Management of Dimakuchi Tea Estate (AIR 1958 SC 353 wherein it was held that having regard to the scheme and objects of the Act, and its other provisions, the expression 'any person ' in section 2 (k) of the Act must be read-subject to such limitations and qualifications as arise from the context; the two crucial limitations are (1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and (2) the person regarding whom the dispute is raised must be One in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a 'workman' within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or

substantial interest. Where the person was not a workman as he belonged to the medical or technical staff-a different category altogether from workmen of the establishment had no direct, nor substantial interest in his employment or non-employment, and it cannot be said, even assuming that he was a member of the same Trade Union, that the dispute regarding his termination of service was an industrial dispute within the meaning of s. 2(k) of the Act.

7. Hon'ble High Court in the case of Municipal Employees Union vs. Secretary (Labour) (1999) LLJ 192) almost under similar situation dealt with the question of compassionate appointment under Government scheme to the dependents of even daily wagers who have died in harness. In the above case, deceased workman was working with MCD when he died on 15.02.1993. His family comprised of his old parents and a younger brother Shri Badley Ram. After the death of the workman Shri Sansar Pal his brother Shri Badley Ram requested MCD to give him compassionate appointment. Conciliation proceedings also ended in failure as management took the sand that his case is not covered by the scheme for compassionate appointment. It was also the stand of the management that the present matter is not covered by Industrial dispute as defined under Section 2(k) of the Act. Hon'ble High Court relied upon the case of Delhi Mazdoor Workers Union vs. management of MCD decided on 26.11.1998 wherein Hon'ble High Court has taken a view that definition of industrial dispute is wide enough to cover a dispute of the present nature. It was observed that definition of industrial dispute as contained in section 2(k) of the Act is wide enough to cover the dispute of the workman relating to the non-employment of other person. Beneficiary of the claimant need not be a workmen of the employer at the time of raising the dispute. Dispute can be raised by the workman of the employer even in respect of non-employment of any person who is not a workman at the material time. While making the aforesaid observations, reliance was also placed by the Hon'ble High court upon the case of Kays Construction Company Pvt. Ltd. Vs Workmen (1958 II LLJ 60). Thus, a dispute of the present nature where benefit of employment on compassionate grounds is being claimed in respect of employment of deceased husband by his widow, such a dispute is duly covered by the definition of workman as contained under the Act.

8. It has been held by Hon'ble Supreme Court in the case of Surinder Singh vs. Engineer-in-Chief, CPWD (AIR 1986 SC 1976) decided on 17.01.1986, dealt with the question of equal pay for equal work in respect of daily rated workmen performing same duties which was being performed by their regular counterparts in the department. After discussing the ambit and scope of Article 14 of the Constitution of India, it was held that there should be equal pay for equal work of equal value. It makes no difference whether such workmen are employed against sanctioned post or not so long as they are performing the same duties. They must receive same salary and conditions of service must also be the same. Hon'ble Supreme Court also expressed anguish that most of the workers are kept in service on temporary basis as daily wage workers without their service being regularized, which is completely against the spirit of Article 14 of the Constitution of India.

9. In the Establishment and Administration manual also, there is no upper age limit prescribed under the Scheme. Rather, power has been given to the Government to relax the upper age limit, if any. Not only this, as per para 9 of the scheme, even if a widow gets married later on and gets appointment on compassionate grounds, she will be allowed to continue in service even after remarriage. Clause 16(e) of the above manual also lays down that requests for compassionate appointment consequent on death or retirement on medical grounds of Group 'D' staff may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case.

10. As a sequel to my detailed discussion made hereinabove, it is held that the claimants herein, is entitled to regular appointment on compassionate grounds as regular field worker. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes

A.C. DOGRA, Presiding Officer

Dated : January 24, 2018

नई दिल्ली, 7 फरवरी, 2018

का.आ. 271.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, अशोक होटल एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 69/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/01/2018 को प्राप्त हुआ था ।

[सं. एल-42011/149/2014-आईआर(डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th February, 2018

S.O. 271.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (ID Case No. 69/2015) of the Central Government Industrial Tribunal-cum-

Labour Court No. 1, Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the General Manager, Ashok Hotel and their workmen, which was received by the Central Government on 31/01/2018.

[No. L-42011/149/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT No. 1 DELHI

ID No.69/2015

The President,

Ashok Hotel Mazdoor Janta Union,

Ashok Hotel Staff Quarter No.C-47/48,

Chanakyapuri, New Delhi – 110 021 …Workman

Versus

The General Manager,
Ashok Hotel, (Unit of ITDC)
50-B, Chanakyapuri,
Delhi 110 021 …Management

AWARD

In the present case, a reference was received from appropriate Government vide letter No.L-42011/149/2014-IR(DU) dated 04.02.2015 under clause (d) of the sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) from the Central Government for adjudication, terms of which are detailed as under:

> 'Whether the workmen Shri Rajesh Shah S/o Shri Rameshwar Sah, Pradeep Kumar Singh, S/o Shri Dasrath Singh, Shri Manoj Singh S/o Shri Veer Pal Singh and Shri Manish Kumar Thakur S/o Purshottam Thakur entitled to regularization in Hotel Ashoka? If yes, with effect from which date and if not, to what relief are they entitled to?'

2. Parties were put to notice and on appearance statement of claim was filed on behalf of the claimants mentioned in the reference with the averments that the case of the workmen was taken by Ashok Hotel Mazdoor Janta Union for regularization with the management of Ashok Hotel in the regular time scale of Rs.4660-6910 prior to 2007 and Rs.8860-21700 for 2007 onwards and for unskilled category such as helper Rs.4060-5385 prior to 2007 and now revised to Rs.7320-17970. The claimants are working in the maintenance enquiry of Ashok Hotel from the respective dates mentioned against their names in Annexure A in the premises of Ashok Hotel.

3. Regional Provident Fund Commissioner, on account of violation of PF Trust rules, cancelled PF Trust of Ashok Hotel vide letter dated 28.12.2010 as the management did not deposit the EPF of the employees in the Trust Account of Ashok Hotel. It is also alleged that certified standing orders of Ashok Hotel clearly provide that the management can appoint permanent, temporary, badli, casual, provisional and apprentice and there is no provision in the certified standing order of Ashok Hotel to use the services of employees through contractor. As per Section 3 of the certified standing orders, if a person has worked for 12 months continuously, he may be absorbed as a permanent employee, subject to availability of vacancy in the permanent cadre particular trade/section/department. Since permanent vacancies are available in the respective departments, even then the management of Ashok Hotel is not regularizing services on permanent basis of the above claimants. Claimants have pleaded that they have worked for 240 days in each calendar year and as such, they are entitled for regularization in the respective cadre with the management of Ashok Hotel. Management is also taking double duty from the above claimants without paying of any extra wages. Job carried out by the claimants is perennial in nature and cannot be carried out through contract workers. Moreover, management of Ashok Hotel is not registered with Labour Department, i..e. Central Government under the Contract Labour (Regulation & Abolition) Act, 1970 (in short CLRA Act) nor the so called contractor was having any valid licence from the Labour Department. Therefore, contract between the management of Ashok Hotel and the contractor are sham, camouflage and is not genuine. Management was also not giving any kind of leaves though they are entitled for 12 casual leave, 15 privilege leave and 3 National holidays. Finally, it has been prayed that the management may be directed to regularize the claimants in the regular pay scale.

4. Claim was demurred by the management, who filed written statement thereto taking various preliminary objections. It has been alleged that the claim is not maintainable against the management as the claimants are not

employees of the management but of M/s M/s Chauhan & Company. There is no cause of action of the claimant against the management. Answering management is neither necessary party nor an appropriate party for adjudication of the claim. Liability towards the claimants, if any, is that of the contractor who has engaged the claimants. On merits, management has denied most of the averments made in the statement of claim. However, it has been admitted that the claimants were employees of the contractors and were employed at some point of time under the contract awarded to the contractor by the management. The said contracts were awarded purely on temporary basis for a period of one year. As such, the claimants are employees of the said contractor and not that of the management. It has been prayed that that the claim may be rejected.

5. Rejoinder was filed on behalf of the claimants to the statement of defence filed by the management wherein the stand taken in the statement of claim was reiterated.

6. Against this factual background, this Tribunal on the basis of pleadings of the parties, vide an order dated 10.12.2015 framed the following issues:

(1) Whether claimants are employees of Chauhan & Co and not of Ashok Hotel, as alleged?

(2) As in terms of reference.

7. Claimant in order to prove their case against the management examined Shri S.S. Upadhyay as WW1, whose affidavit Ex.WW1/A is on the same lines as the facts contained in the statement of claim. Shri Upadhyay also relied on documents Ex.WW1/1 to Ex.WW1/8. Claimants also examined Shri Manoj Singh Chauhan as WW2, Shri Pradeep Singh as WW3, Shri Manish Kumar as WW4, whose affidavits are Ex.WW2/A, Ex.WW3/A and Ex.WW4/A and they relied on documents Ex.WW2/1 to Ex.WW2/10, Ex.WW3/1 to Ex.WW3/9 and Ex.WW4/1 to Ex.WW4/6 respectively.

8. It is pertinent to mention here that after closure of evidence on behalf of the claimants, none appeared on behalf of the managements, as a result of which management was proceeded ex-parte. No evidence has been adduced on behalf of the management so as to rebut the case of the claimant and management has only filed written submissions, which has been taken on record.

9. I have heard Shri S.S. Upadhyay, A/R for the claimants.

Findings on Issue No.1 and 2

10. Both, Issue No.1 and 2 are inter-connected and as such they are being disposed off together. It is clear from perusal of pleadings that the claimants have come with the specific plea that they were engaged as clerk, electrician and helpers in the maintenance enquiry of Ashok Hotel from the dates mentioned in Annexure A and they have been working in unskilled category. Affidavit Ex.WW1/A of Shri S.S, Upadhyay as well as of other claimants clearly show that they have tried to support their case as mentioned in the statement of claim. It is further clear that the claimants worked regularly and continuously with the management. Shri S.S. Upadhyay, in his affidavit Ex.WW1/A has specifically alleged that he has worked in Ashok Hotel from 1960 to 1995 in various capacities. He is President of Ashok Hotel Mazdoor Janta Union and the claimants herein have approached the union that they are being paid salary by the management of Ashok Hotel through contractor. Their case was discussed in the executive committee meeting of the union and on the basis of the resolution passed by the union on 23.03.2013. Demand notice Ex.WW1/2 was served upon the management. In para 6 of the affidavit, there is mention of the names of various contractors, including that of M/s Chauhan & Company., from 2014 till date. In the affidavit, there is also reference to the standing orders of Ashok Hotel and Section 3 deals with classification of employees. It is also the case of the claimant the contractor was not duly licenced as required under the provisions of CLRA Act nor there is registration of Ashok Hotel with Labour Department, i.e. Central Government. Claimants have worked continuously in each calendar year for more than 240 days. There is also paid less wages than their counterparts who are performing similar duties.

11. It is clear from perusal of resolution Ex.WW1/1 that on 13.03.2013, meeting of union was held under the chairmanship of Shri S.S. Upadhyay, WW1, who was duly apprised of the demands raised by the claimant. Demand notice Ex.WW1/2 was also served upon the management and after failure of the conciliation proceedings, matter was referred to this Tribunal for adjudication as required under the law.

12. Shri S.S. Upadhyay, A/R for the claimant specifically referred to section 3 of the certified standing orders of Ashok Hotel and this section clearly provides as under:

Section 3 : Classification of Employees

a) Permanent
b) Temporary
c) Badlis
d) Casuals
e) Probationers

13. Standing orders also deals with the permanent as well as temporary employees. Section 5 clearly provides that each employee shall be issued identity cards free of cost and Section 15 deals with the punishments which can be awarded to the workmen.

14. During the course of arguments, Shri Upadhyay appearing on behalf of the claimants invited attention of this Tribunal to Employees provident Fund Organization order dated 28.12.2010 wherein establishment of the Trust, on account of failure of the management of Ashok Hotel to deposit the dues of the workmen in the said Trust within the time frame, resulted in its de-recognition. This order also shows that the Trust is incurring huge losses and management has not deposited PF amount as required under the law. It is further clear from perusal of letter Ex.WW1/7 and Ex.WW1/7A that the management of Ashok Hotel has been supervising duties as well as deputing workmen at various places as per their requirement. In order to enhance efficiency, management has also taken various steps. Officials of the management were also conducting surprise checks of the workmen who were performing duties in the premises of Ashok Hotel. In the letter Ex.WW1/7B, there is mention of names of 5 workers, S/Shri Khiyali Ram, Harshu, Hanif Khan, Sanju and Neeraj, who are alleged to be employees of M/s Beads Service group were found to be sleeping on duty. Letter Ex.WW1/7-A also shows that workers of M/s Sparkling Enterprises were found sleeping on duty. Management has also issued an appreciation letter Ex.WW1/8 to Shri Daljit Singh for performance of excellent duties.

15. Statement of the claimants, WW2, WW3 and WW4 are also on similar lines as that of WW1.

16. Now the primary question before this Tribunal is whether the workmen have completed 240 days in a calendar year since the time of their initial engagement and also whether the claimants herein are workers of the contractor or that of the management directly. It is pertinent to note here that no evidence worth the name has been adduced by the management in order to prove that the claimants herein were directly engaged by the contractor temporarily for a period of one year and in fact different contractors have been engaged by the management so as to get the work done from the claimants herein. Neither copy of the contract agreement has been filed by the management nor any of the contractors who are mentioned in the written statement, including M/s Chauhan & Company has been examined by the management. In such circumstances, the stand of the management taken in the written statement to the effect that the claimants herein are employees of the contractor and not that of the management has not been proved by adducing any evidence worth the name. Whereas evidence adduced by the claimants herein are admittedly working in the premises of Ashok Hotel and this fact is duly established from the identity cards of the claimants Ex.WW2/1 to Ex.WW2/4, Ex.WW3/1 to Ex.WW3/5, Ex.WW4/2 and Security Pass Ex.WW2/7. It is further clear from perusal of movement chart Ex.WW2/9 and Ex.WW2/10 that the claimants have been working in the establishment of the management of Ashok Hotel during the year 2013. There is also mention of the names of the claimants in this list alongwith their card number. This chart is duly verified by the Group Leader as well as Head of Department and it is clear from the record that the claimants have been doing work continuously with the management.

17. No doubt initial onus is always upon the workmen to prove that he is in the employment of a particular employer as this principle of law was affirmed by the Hon'ble Apex Court in the case of Nilgiri Co-operative Market Society Ltd. Vs. State of Tamil Nadu (AIR 2004 SC 1639). However, as discussed above, management has not adduced any evidence so as to rebut the case of the claimant who have expressly stated in their respective affidavits that they have completed 240 days in a calendar year. In such a situation, this Tribunal has to draw adverse inference against the management and even otherwise, evidence on record is quite consistent to the effect that the claimants are doing regular work since the time of their engagement.

18. Now, the vital question before this Tribunal is whether the claimants herein are employees of the management or that of the contractor. As discussed above, management has not examined any of the contractors so as to prove that the claimants herein were engaged for a specific period by the management. Not only this, there is no documentary evidence, i.e. contract agreement filed by the management so as to prove the period of contract and the fact that work of helpers, electrician etc. was allotted to the contractor. To my mind, examination of the contractor as well as proving of contract documents was essential so as to hold that the claimants herein were employees of the contractor and not that of the management. Management has not filed any proof of its registration under Section 7 of the CLRA Act nor licence of the contractor as required under Section 12 of the LCRA Act has been proved on record. Non-examination of the contractor or any other officials of the management so as to prove the contract documents has dealt a crippling blow to the case of the management.

19. During the course of arguments, Shri Upadhyay heavily relied upon the case of Steel Authority of India vs. National Waterfront Workers Union, which has been subsequently followed and discussed by the various High Courts as well as Hon'ble Apex Court in all its subsequent pronouncements with the question of contract labour or whether the contract is sham, bogus or camouflage came up for consideration.

20. It is also not out of place to mention here that Constitution Bench of the Hon'ble Apex, while discussing the provisions of CLRA Act, and after discussing the entire spectrum of the case law on the subject in Para 125 of the judgement, it was held as under:

> (5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to

conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit there-under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

21. As noted above, SAIL case (supra) has made the position clear that even without the abolishment of contract labourers under Section 10 of the Central Labour (Regulation & Abolition) Act, 1975, it is open to the contract labourers to raise a dispute contending that the contract between the principal employer and the contractor is sham and nominal and if such a dispute is raised, the Industrial Tribunal has jurisdiction to decide the dispute. In other words, when the dispute is raised by the contract labourers that they were the direct employees of the principal employers, the Industrial Tribunal has to decide whether the contract between the principal employer and the contractor is sham and nominal and merely a camouflage. The Central Government Industrial Tribunal can grant relief to the contract labourers after finding that the contract between the principal employer and the contractor is sham and nominal. Further, Hon'ble Apex Court has clarified that the principle in Gujarat Electricity Board case continues to govern the filed and remedy of aggrieved workmen is to approach the Industrial Adjudicator for adjudication of such dispute that they are employees of the principal employer. This , decision in the SAIL case (supra) abundantly made it clear that abolition of contact labour under Section 10 of the CLRA Act and it is open to the contract labourers to raise a dispute by contending that the so called agreement is between the principal employer and private contractor is a mere camouflage, sham or bogus. Court in such a situation can also pierce the veil. It may be mentioned that this view has been followed by Hon'ble High Court by Division Bench of Hon'ble High Court in management of Ashok Hotel vs Workmen in WP(C) No.14828/2006 decided on 19.02.2013. In the said case also it was contended on behalf of the management that in the absence of any specific issue to the effect that contract between the principal employer and contractor is sham, camouflage or bogus etc, any finding by the Industrial Adjudicator regarding validity of such contract can be given. However, this contention of the management was out-rightly rejected by the Hon'ble High Court by observing as under:

'Learned counsel for the petitioners has strenuously contended that the respondent/workmen have nowhere stated that the contract was a sham and a camouflage and hence this issue of lifting of the corporate veil and holding the contract to be sham could not be considered. The claim statement filed by the workmen states that the principal employer is the petitioner and M/s Sparkling Enterprises was working as a contractor in the hotel without any agreement illegally and unlawfully. Thus, even if the words sham and camouflage are not used, the so called illegal agreement between the petitioner and M/s Sparkling Enterprises has been challenged and the court is thus required to pierce the veil and find out the true position.

22. Therefore, a contrary view taken by the Hon'ble Single Judges of the High Court in some of the judgements cannot be followed in the fact of the above decisions of the Division Bench. Thus, there is hardly any doubt that the proposition of law while considering the question whether contract labour is a contract employee or that of the principal employer or that of the private contractor. Well recognized test is (i) whether principal employer pays salary through contractor (ii) whether principal employer controls and supervises work of the employer . No doubt, in General Manager OSD vs Bharat Lal (2011) 1 SCC 635 it was held that merely because officer of the principal employer gave some instructions to employees of the contractor, that would not make h im an employee of the principal employer. A bare perusal of the judgement in the above case would show that the management has also proved contract agreement and brought enough evidence on record to prove that salary was being paid by the contractor. Control and supervision though being exercised generally through officials of the management yet representative of the contractor were also performing such job from time to time. Factual matrix in the case on hand entirely depicts a different scenario inasmuch as the management has not brought any evidence worth the name on record to show that only general supervision was being done by officials of the management without overall control being that of the contractor.

23. It is clear from the above that the Industrial Adjudicator is mandatorily required to decide the question whether the contract agreement is valid was it was merely a ruse or a camouflage so as to escape compliance of beneficial legislation and thus deprive the workmen of various benefits irrespective of the fact whether any prohibition notification has been issued under Section 10 of the CLRA Act or not. Use of the words 'otherwise' in the above para of the judgement is clearly suggestive of the fact that even if there is any prohibition notification in terms of provisions of Section 10 of the CLRA Act, still the Industrial Adjudicator will have to consider the question whether the so called contract by the principal employer, i.e. the management with a private contractor has been interposed on the ground of

having undertaken to produce any given result in the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations. Since in the case on hand, management has not produced any contract document nor examined any official so as to prove the said documents, as such, this Tribunal is not even in a position to ascertain the terms and conditions of the contract so as to uphold the plea of the management that the claimants herein are employees of the contractor and not that of the management.

24. This Tribunal while deciding the status of the claimant herein is to keep in mind that the claimants have been working in the establishment of Ashok Hotel for the last several years and they area also performing job of regular or perennial nature. Hon'ble Apex Court in a number of judgements has strongly deprecated the practice of engaging contract labour where work is regular or perennial in nature. Moreover, this Tribunal cannot ignore the fact that provisions of Act is primarily meant to ameliorate the conditions of service of the workmen and the Act being a social and beneficial legislation is required to interpreted in such a manner so as to serve the cause of the workmen who are in service for the last several years. The court is pained to observe that a very strange kind of practice is being followed by the managements, wherein workmen have been performing their duties for the last several years and such employees are shown on paper to be in the employment of sub-contractors and the contractors are changing from time to time and the so called contractors are not engaging their own labour on the spot and the fact of the matter is that such employees who are already working in the establishment are being shown to be working in the employment of such different contractors who have not even seen faces of such employees. Thus, these contractors are virtually name lenders without knowing anything about contract labourers who are performing their work on the directions of the officials of the management. By no stretch of reasoning such employees can be termed to be in the employment of the contractor solely on the ground that salary of such employees is being paid through such contractors or the amount is being credited in their bank account. In order to determine the jural relationship of employer and employee, there are other vital factors which are required to be proved by the management who has come with the plea that such contract employees are in fact employees of the contractor and not that of the management. To prove such a plea, filing of contract agreement and examination of contractor or official of the management is necessary.

25. During the course of arguments, reference was also made to case of Uma Devi (2006) 4 SCC 1) which is normally relied upon from the side of the management. It is necessary to point out here in the said case provisions of the ID Act or CLRA Act were not directly involved and the primary issue before the Constitution Bench in the said case was regarding fate of irregular and illegal appointments who have been virtually taken in service throwing all norms to the winds and engaging through back door. It has been made clear in Durgapur Casual Workers Union vs Food Corporation of India (2015) 2 SCC 786) as under:

> 'Uma Devi (2006) 4 SCC1 has not overridden powers of the Industrial and Labour Courts in passing appropriate order, once unfair labour practice on the part of the employer was established. In the instant case, workmen concerned were working as contract labour under the contractor in the rice mill of the Corporation. The contract system was terminated and the rice mill was closed in the year 1990-91. The effect was termination of the services of the workmen. They were, thus, entitled to employment when the employer proposed to take into his employment any person, in view of Section 25-H, ID Act. Under Section 25-H, the retrenched workmen who offer themselves for employment shall have preference over the other persons. It was for the said reason that the workmen were employed by the Corporation.
>
> The workmen who were retrenched were rightly taken in the services of Corporation. Admittedly, no plea was taken by the Corporation either before the State Government or before the Tribunal that the initial appointment of workmen were illegal or they were appointed through back door means.'

26. In the case on hand also, management has not come with the specific plea that engagement of the claimants herein was illegal or that they were engaged in an illegal manner without knowing about the procedure. Therefore, reliance placed in the written submissions upon Uma Devi case (supra) is not of any help to the case of the management. Net result of the discussion is that the claimant herein are not employees of M/s Chauhan & Company and they are held to be in the employment of Ashok Hotel.

27. Now the residual question is whether such employees are entitled for regularization. There is evidence on record that the post of helpers, electricians etc. upon which most of the claimants are working from time to time are falling vacant and claimants herein are not being considered for regularization against such posts. It is made clear that in case claimants herein are fulfilling basis qualification or criteria meant for regularization upon such posts, in that situation management is legally bound to consider the claimants herein for the purpose of regularization. This Tribunal cannot ignore the fact that section 3 of the standing orders of Ashok Hotel, classification of employees in five categories and there is no mention of contract labour in such section. Therefore, engagement of contract labour is required to be discouraged, being against provisions of Standing Orders of Ashok Hotel. Accordingly, it is held that the claimants are entitled to be considered for regularization in accordance with rules and regulations of Ashok Hotel from the date when such similarly situated employees have been made regular by the management. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated : January 29, 2018

नई दिल्ली, 7 फरवरी, 2018

का.आ. 272.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, श्री संजय अग्रवाल, वायु सेना स्टेशन, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 46/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 14/11/2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर(डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th February, 2018

S.O. 272.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (ID Case No. 46/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Shri Sanjay Aggarwal, Air Force Station, New Delhi and their workmen, which was received by the Central Government on 14/11/2017.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM-LABOUR COURT No.1 DELHI

ID No. 46/2014

Shri Birju Shah,
S/o late Shri Sirekhan Shah
Resident of H.No.418,Gali No.12, Block-G,
Sangam Vihar, New Delhi-110062 …Workmen

Vs.

Sh. Sanjay Aggarwal,
A.O.C. 7, BRD, Air Force,
Air Force Station, Tughalkabad
M.B. Road, New Delhi-110062 …Management

AWARD

1. This is a claim filed directly under Section 2A of the Industrial Disputes Act, 1947, (in short, the Act), by workman Shri Birju Shah with the averments that he was working with the management as "Conductor-cum-Helper" at the abovementioned establishment w.e.f. 01.01.2007 and last salary drawn was Rs.2,100/-. At the time of appointment, no appointment letter was issued to the workman and the workman has been performing his duty sincerely and without any complaint from any quarter. The management was giving salary of Rs.2,100/- per month and also used to obtain signatures of the workman on blank paper. The workman was not provided the facility of PF, holiday, leave, bonus, over time etc. and when the workman demanded the same from the management i.e. Shri Sanjay Aggarwal, he got annoyed and tried to search for shunting him out from the job.

2. It is the case of the workman that management has promised to pay the salary @ of Rs.7,254/- per month and when the demand was made by the workman for the payment of the same, Shri Sanjay Aggarwal misbehaved with the workman and also kicked him out from the job on 01.06.2013 without any legal notice. The management has also not paid salary from 01.10.2012 to 31.05.2013. The workman tried to join the job in the establishment of the management but of no use.

3. It is alleged in para 8 of the claim that workman is entitled to due salary and other benefits details of which are as under:

Sl. No.	Month	Fixed Salary	Received Salary	Balance
1.	October, 2012	7,254/-	2,100/-	5,154/-
2.	November, 2012	7,254/-	2,100/-	5,154/-

3.	December,2012	7,254/-	2,100/-	5,154/-
4.	January, 2013	7,254/-	2,100/-	5,154/-
5.	February,2013	7,254/-	2,100/-	5,154/-
6.	March, 2013	7,254/-	2,100/-	5,154/-
7.	April, 2013	7,254/-	2,100/-	5,154/-
8.	May, 2013	7,254/-	2,100/-	5,154/-

2. The workman has approached the management several times for release of his above service benefits but of no use. Thereafter the workmen sent legal notice dated 07.06.2013 to the management by way of speed post but no reply was sent to the said notice. Resultantly, workman has approached the Labour Commissioner and during the course of conciliation proceedings, management has flatly refused to pay balance of the amount to the workman. The above act of the management is totally illegal, arbitrary and amounts to unfair labour practice as defined under the Act and he has not been given the salary from October, 2012. He has prayed this Tribunal for his reinstatement in service with full back wages.

3. The claim was contested by the management who filed written statement. The management, in preliminary objections, alleged that Birju Shah was working initially for a short period in the year 2009 with Service Institute for the job of bus cleaner-cum-helper as a casual employee voluntarily on as and when required basis without any statutory employment. The workman was paid his salary out of non-public funds which is meant for welfare and service activities for air force stations. The service institute is not a State within the meaning of Article 12 of the Constitution nor the workman is covered by the definition of workman as defined under section 2 (s) of the Act. Moreover, it is not an industrial dispute which requires any adjudication by this tribunal. On merits, it is submitted that Birju Shan worked for very short period on part time basis as cleaner cum helper on school bus and was being paid through Service Institute, a welfare venture under Non-Public Fund during the period 2008-2009. The workman had left the job of his own in May, 2009. In fact, workman again started working as casual labour from 05.09.2012 on daily wages till May, 2013. The number of casual labours required on a particular day totally depends on the basis of requirement on particular day. The engagement of such workman is as per the need of the management. Moreover, the workman has never worked continuously. He has worked as per Annexure R-1 for few days and has thus not completed 240 days in a calender year. The management has denied other averments made in the statement of claim.

4. Replication was also filed on behalf of workman to the written statement of the management wherein workman has reasserted the stand taken in the statement of claim.

5. Against this factual background, this Tribunal on the basis of pleadings of the parties, vide order dated 26.05. 2016 framed the following issues.

(i) Whether removal of the claimant from the job is wrong and illegal as alleged?

(ii) Whether petition is not maintainable in view of the various preliminary objections?

6. The workman, in order to prove the cause against the management, examined himself as WW-1 and tendered in evidence his affidavit Ex.WW-1/A as well as documents Ex.WW-1/1 and WW-1/2.

7. It is clear from the record of the case that no evidence was adduced by the management.

8. I have heard Shri Neeraj Kumar, Ld A/R for the workman and Shri Nishant Kumar, Ld. A/R for the management.

Issue No.2.

9. Issue No.2 is legal in nature as such same is being taken up first for the purpose of discussion. It is clear from the pleadings of the parties that management has come with the specific plea that workman was engaged as casual labour by the management for the job of bus cleaner. It was strongly urged on behalf of the management that workman did not fall within the definition of 'workman' as defined under section 2(s) of the Act nor he has completed 240 days in a calendar year prior to his termination. The other contention of the management was that service institute is created and maintained for welfare of the Air Force personnel under the guidance of management. This institute is exclusively a welfare venture of troops and their dependents. It is being maintained on monthly contribution from serving personnel. Further, it works on no profit no loss basis, therefore, it does not fall within the definition of 'Industry', as defined under the law. It was also urged that it does not fall within the definition of 'State' as defined in Article 12 of the Constitution of India. Though in the written statement, management has relied upon certain rulings but no such ruling was submitted during the course of arguments at the final stage of hearing nor any copy thereof was supplied to this court as well as the opposite party.

10. So far as the plea of the management that workman herein does not fall within the definition of 'workman' is concerned, the same has to be appreciated in the background of definition of the 'workman' as contained in Sec. 2(s) of

the Act, which is very wide and comprehensive and it is necessary to reproduce the definition of 'Workman' as given in Section 2(s) of the Act which reads as under :

> **"workman" means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-**
>
> **(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or**
>
> **(ii) who is employed in the police service or as an officer or other employee of a prison; or**
>
> **(iii) who is employed mainly in a managerial or administrative capacity; or**
>
> **(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature."**

11. It has been held by the Hon'ble Apex Court in the case of ***Devender Singh Vs. MC Sanaur AIR (2001) SC 2532,*** wherein, while interpreting provisions of Section 2(s) of the Act, which deals with definition of workman, as under:

> **"The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s)of the Act.**
>
> **The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.**
>
> **15. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of `workman'.**

12. It is thus clear from the above definition that even if a person is engaged on casual or on daily basis as labour, such a person would fall within the ambit and scope of workman as defined under section 2(s) of the Act.

13. The other plea raised in the preliminary objections is to the effect that present dispute does not fall within the definition of industrial dispute as defined under section 2(k) of the Act. In this regard it is appropriate to refer to the definition of industrial dispute as denied in Section 2(k) which is as under :

> **"The expression 'industrial dispute' is defined in Section 2(k) to mean 'any dispute or difference between employers and employers and or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person'.**
>
> **The one feature common to all the definitions is that the expression has been so widely defined as to leave anything out of its comprehension and purview involving the area of conflict that may develop between the employer and the workman and in respect of which of a compulsory adjudication may not be available. This is recognized to be the width and comprehension of the expression."**

14. It is further clear that when the workman is amenable to the definition of workman within section 2(s) of the Act, in such situation when a dispute is raised by such a workman, the prima facie onus would be upon the employer to prove that such dispute does not fall within the definition of industrial dispute.

15. In view of the discussion made above, it is held that workman falls within the definition of 'workman' and the dispute in the present case is also an industrial dispute amenable to this Tribunal.

Issue No. 1

16. The main issue before this court is whether removal of the workman by the management is wrong and illegal. It is clear from the pleadings of the parties that workman herein has alleged that he was engaged with the management on 01.01.2007 on salary of Rs.2,100/- per month. In fact, case of the workman is that his salary was Rs.7,254/- per month but the management has not paid the same. The management in the written statement has admitted that claimant was working initially for a short period in the year 2009 with serviced institute for the job of bus cleaner-cum-helper as a casual employee. It is also admitted that he was paid remuneration/salary from the non public funds. The contention of the management that service institute does not fall within the definition of 'State' as defined in Article 12 of the Constitution, is not of much help to the case of management in as much as an industrial dispute is triable by this Tribunal

even when a body or an undertaking does not fall within the definition of 'State'. The definition of the State as given in Article 12 of the Constitution is in relation to the fundamental right viz-a-viz the jurisdiction of the Hon'ble High Court as well as Hon'ble Supreme Court for issuance of various kinds of writs.

17. It is clear from the evidence of the claimant, who has filed affidavit Ex.WW1/A which is on the same lines as the averments made in the statement of claim. He has been subjected to cross-examination in which he has admitted that no appointment letter was issued to him at the time of his initial appointment. He admitted that EWx.WW1/M1 is the letter, showing proof of salary, Ex.WW1/2 is the salary certificate. He has further clarified that management used to obtain his signature before payment of salary though there is no entry in his pass book regarding payment of wages. He was also issued ID card.

18. It has been admitted in para 2 of the W.S. that he worked for a short period and later on he was again engaged from 05.09.12 and worked on daily wages till May,2013. This merely shows that the management has admitted that he was in the employment till May, 2013.

19. It was strenuously urged on behalf of the management that workman has not worked for 240 days in a calendar year before his termination. Ld. A/R for the management as such urged that provisions of Section 25 (F) of the Industrial Dispute Act are not applicable to a case where there is no completion of 240 days service prior to termination.

20. There is hardly any dispute with the proposition of law that onus is always on the workman to prove that he was employee of the employer and such an employee has to prove that he has worked for 240 days in a calendar year prior to his termination. In this regard, reference may be made to a case ***Director Fisheries Vs. Bhikhubhai (2010) SCC 47.***

21. The workman has further to prove by leading cogent evidence that he has worked for 240 days prior to his termination. The evidence adduced by the claimant herein does not show in fact that he has completed 240 days in a calendar year. In his regard it is appropriate to refer to documentary evidence produced by the workman. It is clear from the perusal of the failure report dated 04.3.14 Ex.WW1/1 that this document does not help the workman in any manner so far as the question of working for 240 days in a calendar year is concerned. This document simply enables the claimant to file claim directly under Section 2 A of the Act regarding his termination. Ex.WW1/2 is demand notice served by the claimant upon the management wherein he has claimed minimum wages. There is also reference in the said letter from October, 2012 to May, 2013. However, there is no mention of any working days in the said letter. I have also carefully perused the affidavit of the claimant Ex.WW1/A. In para 9 of the affidavit, claimant has given the detail of dues of salary and other benefits. Again, there is no mention of completion of 240 days in a calendar year.

22. Actually, there is another document Ex.WW1/MW1 which was not disputed by either of the parties during the course of arguments and this document clearly shows that claimant alongwith other co-workers (9 in all) were engaged as casual labour by the management and they were working as school bus conductors. In the said letter, for the month of August, 2008, as per the details, name of the claimant appears at Sl. No.1 and he has been paid Rs.2100/- for the month of August, 2008. Ex.WW1/M2 is letter of the management which shows hat management had waived the admission charges in respect of Birju Shah, bus conductor. However, there is no mention of working days in the said letter. In such circumstances, it cannot be held that claimant has proved that he has worked for 240 days in a calendar year. The claimant has also not taken any step to file any application against the management for production of his attendance register or paqy slips for the period during which he worked as conductor cum helper. Though he management has not adduced any evidence nor any witness has been examined by the management yet that would not mean that management has admitted the case of the claimant. The law is fairly well settled that failure to adduce evidence by a party does not amount to an admission of the case of the opposite party in as much as the party who alleges a particular fact has to prove the same by adducing admissible evidence and failure to adduce the evidence by management does not amount to discharge of the burden of proof upon the plaintiff. The question of adverse inference against a party for non examination would arise when a particular fact is within the knowledge or is required to be proved on record by such a party.

23. The result of the above discussion is that though the claimant admittedly falls within the definition of 'workman', but he has not proved that he has worked for 240 days in a calendar year. It has been held by Hon'ble High Court of Himachal Pradesh in the case of ***Surender Kumar vs. State of Himachal Pradesh & Ors., 2016 LLR 713*** that when a daily wager has not completed 240 days service before his alleged termination, the labour court has rightly declined relief to such a workman. Moreover the language of 25(F) of the Act is very clear and it specifically says that no workman employed in an industry, who has continuous service for not less than 240 days, shall be retrenched unless workman has been given one month notice or salary in lieu of one month notice.

24. However, the residual question before this Tribunal is whether the workman herein is entitled for minimum wages for the period during which he has worked with the management. It is clear from the stand of the management that he was engaged as conductor-cum-helper by the management. The management has also filed Annexure R1 which shows the period of attendance of workman right from September, 2012 till May, 2013. However, this document cannot be taken into consideration as the same has not been proved in accordance with law. Moreover, no witness has been examined by the management in order to prove this document. In such circumstances, the averments made in para 9 of the affidavit Ex.WW1/A, as stated above, are liable to be accepted and it is held that workman is entitled for the balance of the amount after making deduction of the pay which was paid to him by the management from his salary to which he was entitled under the Minimum Wages Act as paid by the Central Government minus the amount which has been paid

by the management for the period during which the workman has worked. Let a copy of this Award be sent for publication as required under section 17 of the Act.

A.C. DOGRA, Presiding Officer

Dated : 02.11.2017

नई दिल्ली, 7 फरवरी, 2018

का.आ. 273.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, आयुक्त, एनडीएमसी एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 152/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/01/2018 को प्राप्त हुआ था ।

[सं. एल-42011/73/2016-आईआर(डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th February, 2018

S.O. 273.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (ID Case No. 152/2016) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Commissioner, NDMC and their workmen, which was received by the Central Government on 01/01/2018.

[No. L-42011/73/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT No. 1 DELHI

ID No.152/2016

Shri Satish Chander & 35 others
MCD General Mazdoor Union,
Room No.95, Barrack No.1/10,
Jam Nagar House, Delhi …Workman

Versus

The Commissioner (North)
North Delhi Municipal Corporation
4th Floor, Civic Centre,
Shyama Prasad Mukherjee Marg, Delhi …Managements

AWARD

A reference under clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment for adjudication vide letter No.L-42011/73/2016-IR(DU) dated 22.08.2016 for adjudication of an industrial dispute with the following terms:

> 'Whether the workmen as mentioned in Annexure A are entitled to equal pay for equal work with effect from 01.04.1.988 and onwards and are entitled to 50% other wages of service rendered as daily wages/muster roll? If not what relief the workman concerned are entitled to?'

2. The claimants as mentioned in Annexure A of the reference have been performing their duty under Horticulture Wing – Narela Zone under North Delhi Municipal Corporation. It is further alleged that as per LPA No.573/2013 titled North Delhi Municipal Corporation Vs. Harpal Singh, Hon'ble High Court has granted equal pay for equal work with effect from 01.04.1998 onwards and 50% of their muster roll services were counted for pensionary benefits. These workmen are similarly situated with those workmen who got award/order and thus the claimants are also entitled for equal pay for equal work from 01.04.1988 onwards alongwith 50% of their muster roll service may be counted for pensionary benefits, in view of circular dated 16.06.1988. In the light to the above office circular, management has followed concept of equal pay for equal work which has been upheld by the Hon'ble High Court vide LPA

No.573/2013. Lastly, claimants have prayed that they may be awarded equal pay for equal work and 50% of their services rendered as daily wager/muster roll, alongwith all consequential benefits with effect from 01.04.1988..

3. Despite affording of several opportunities, management failed to put in their appearance, as a result of which management was proceeded ex-parte on 02.02.2017. Thereafter, ex-parte evidence of Shri B.K. Prasad was recorded. Shri B.K. Prasad tendered in evidence his affidavit which is Ex.WW1/A. WW1 also relied on documents Ex.WW1/1 to Ex.WW1/6.

4. I have heard Shri B.K. Prasad, A/R for the claimants.

5. The moot question which arises for consideration before this Tribunal is whether the claimants herein are entitled to the equal pay for equal work with effect from 01.04.1988 and are also entitled to 50% other wages of service rendered as daily wagers/muster roll.

6. It is clear from evidence as well as pleadings on record that the claimants were initially working as mali on muster roll basis on regular basis from the dates as mentioned in Annexure A annexed to the reference. There is also office order Ex.WW1/2, which in fact deals with grant of equal pay for equal work to the daily rated workers and compilation thereof. It has been clarified in the above office order that total monthly emoluments admissible to regular counter parts of daily rated workers at the minimum of the respective scale of pay may be multiplied by number of days in a particular month after deducting therefrom the days of absence plus the days of rest falling in the week/weeks in which the worker remained absent and the result may be divided by the number of days in the month. The figure so arrived will be the daily rate of wages of the worker and in case daily rated workers worked for all the working days in a month including admissible rest days, he is entitled to full wages admissible at the minimum stage of the respective scale of pay, including DA/HRA/CCA admissible to his regular counterparts.

7. Hon'ble Supreme Court in the case of Surinder Singh vs. Engineer-in-Chief, CPWD (ATR 1986 SC 1976) decided on 17.01.1986, dealt with the question of equal pay for equal work in respect of daily rated workmen performing same duties which was being performed by their regular counterparts in the department. After discussing the ambit and scope of Article 14 of the Constitution of India, it was held that there should be equal pay for equal work of equal value. It makes no difference whether such workmen are employed against sanctioned post or not so long as they are performing the same duties. They must receive same salary and conditions of service must also be the same. Hon'ble Supreme Court also expressed anguish that most of the workers are kept in service on temporary basis as daily wage workers without their service being regularized, which is completely against the spirit of Article 14 of the Constitution of India.

8. Hon'ble Supreme Court in the case of Director General Works, CPWD vs Devender Singh considered the question of regularization as well as payment of equal wages for such daily rated workmen. Writ appeal was filed against judgement dated 18.04.2004 of the Single Judge, whereby the writ appeal filed by the management was dismissed and award passed by Industrial Tribunal No.2 was upheld. It was also the case of daily rated workers working on muster roll who were posted in various Divisions of the CPWD. In the said case, there is clear cut mention in para 9 of the judgment that when services of a junior has been regularized, there is no justification to deny such relief to workman who was senior to such worker., otherwise it would amount to discrimination, which is not permissible under the law, as has been held in Secretary State of Karnataka vs.Uma Devi (2006 4 SCC 1).

9. Hon'ble High Court in Devender Singh case(supra) referred to the decision of the Hon'ble Apex Court in the case of Bal Kishan Vs. Delhi Administration and observed as under:

> 10. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralizing effect in service apart from being contrary to Article 16(1) of the Constitution.

10. There is also judgement dated 04.04.2006 of the Hon'ble High Court which also deals with the same matter, pertaining to the case of Vijay Chand. In the said judgement also, Tribunal has passed an award in respect of workman Shri Vijay Chand on the premise that regularization was granted to equally placed other three workmen, and there was no reason to deny the relief of regularization to Shri Vijay Chand who was similarly placed like the other three workmen. As such, direction was made for considering the case of the workman for regularization. Thereafter, matter was again taken by way of SLP before the Hon'ble Apex Court in the case titled Union of India vs. Vijay Chand decided on 07.01.2011. Contention of the management was rejected and order of regularization by the High Court and that of the Industrial Tribunal was reaffirmed as under:

> 'In our view, the direction given by the Tribunal for consideration of the respondent's case for regularization of service, as was done in the case of other three similarly situated persons, was legally correct and justified and the High Court did not commit any error by refusing to interfere with the order of the Tribunal. In the facts and circumstances of the case, we do not consider it to be a fit case for exercise of jurisdiction by the court under Article 136 of the Constitution.
>
> The special leave petition is accordingly dismissed.'

11. In Director General: Works, CPWD vs Karam Singh and others, wherein it was a case where the claimants were also party to the said case. Contention of the management regarding denial of relief of regularization and equal wages to

such workmen who were performing similar kind of duties like their regular counter parts, was rejected by the Hon'ble High Court of Delhi and the calculation of the wages in terms of office order dated 21.10.1990 applicable for daily rated workers was upheld. It was further held when a particular award has attained finality, such daily rated workers were direct employee and are entitled for equal wages, there is no question of entertaining such plea time and again. Workman was held entitled to the recovery of amounts due under the impugned recovery certificate as ordered by the Tribunal.

12. In the case of Randhir Singh vs. Union of India [1982] 1 SCC 618; it was a case where question of equal pay for equal work was considered in respect of driver constables in Delhi Police. Drivers in the police department were demanding the same pay scale which was being given to other drivers under the services of Delhi Administration. Claim was upheld by the Hon'ble Apex court as under:

> 'Held, the circumstances that the persons belonged to different departments of the Government is not sufficient to justify different scales of pay irrespective of the identity of their powers, duties and responsibilities. If anything by reason of his investiture with the powers, functions and privileges of a police officer, the petitioner's duties and responsibilities were more arduous. The answer of the respondents that the drivers of the police force and the other drivers belong to different departments and that the principle of equal pay for equal work is not a principle which the courts may recognize and act upon is unsound and irrational. The writ petition was, therefore, allowed. The respondents were directed to fix the scale of pay of the petitioner and the driver-constables of the Delhi Police Force, atleast at par with that of the drivers of the Railway Protection Force with effect from January 1, 1973.'

13. Same view has been taken in a latest judgement of the Hon'ble Apex Court in State of Punjab Vs. Jagjit Singh (2017) Lab.I.C. 427 whereby while considering concept of 'Equal pay for equal work', it was observed as under:

> The principle of 'equal pay for equal work' can be extended to temporary employees (differently described as workcharge, daily-wage, casual, ad-hoc, contractual, and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situated, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

14. In NDMC Vs. Harpal Singh (LPA No.573/2013 decided on 27.08.2013), same question was considered by Hon'ble Apex Court and firstly whether the workmen were entitled to wages as was paid by CPWD to daily wagers employed under CPWD and secondly, whether the respondents would be entitled to 50% service reckoned as daily wages to be taken into account for the purpose of pensionery benefits.

15. It is clear from the above judgement that in view of the circular dated 16.06.1998 50% of their muster roll services were counted for pensionery benefits. It is further clear from legal position discussed above that the workmen who have been performing duties of particular nature is entitled to the pay-scale of the same post.

16. As per writ petition in the matter of Ompal and others, Hon'ble High Court allowed equal pay for equal work and observed in Para 3 as under:

> 'Moreover, learned counsel for the respondent has also sought to place reliance upon the communication dated 19.05.1982 issued by the Engineering Department of the MCD which records that the Engineering Department is following the norms of CPWD/Delhi Administration, PWD and all the scales applicable to the workers in CPWD/Delhi Administration, PWD are being implemented in the department. The aforesaid recommendation has been approved by the Standing Committee vide a decision No.2059/Stg. Dated 22.05.1982. In this regard, reference is drawn to the judgement of the Division Bench of this Court in LPA No.126/2010 and connected matters titled MCD Vs. Abid Ali and Othrs.'

17. Though management has taken up the above case by way of S.L.P., but Hon'ble Apex Court has only modified the order of payment of equal pay for equal work with effect from 01.01.1998 as is clear from Para 10, which is reproduced hereunder:

> '10. The only modification which would now be warranted would be the fact that there exists policy circular dated June 16, 1988 which was notified by MCD and it reads as under:
>
> > 'The wages of the workers will be calculated in the manner indicated in the circulars issued by CPWD and will be effective from 01.04.1988 only in view of very tight financial position of the MCD and the ongoing process of regularization of daily wages employees according to phased programme besides other extra facilities already extended to them by different departments. Because of large number of

daily wages employees working in MCD, the increase in wages may bring additional financial liability to the tune of about Rs.6.5 crores and we may have to cut down the civic services drastically if the payment is to be made from the dater earlier than 01.04.1998. Proportionate increase will also have to be allowed to part time workers depending upon the actual duration of their duties. In order to get over the requirement of additional hands for anti-malaria operations, for short duration only, the department may engage 300 unskilled workers at the rate to be worked out on the basis of Rs.875.00 per month. A preamble for approval of increased rates of wages be taken to standing committee positively within two weeks.

11. The policy circular requires differential in wages to be made after April 01, 1988.

12. Ordered accordingly."

18. The above judgement of the Hon'ble High Court were taken care of by the management when they have issued letter dated 16.06.1998 Ex.WW1/3. It is clear that in Ex.WW1/3 under Clause 3 of the said letter, management has increased the wages of the staff as per the above judgement as per the details given in the above clause. Letter also provides that workmen working on the said post are also entitled to the wage from the date when they were working on the said post. Thus, wages of the workmen is to be calculated in the manner given in the above circular/letter. It is therefore held that the claimants, as mentioned in Annexure A to the reference received from the appropriate Government, is entitled to equal pay for equal work with effect from 01.04.1988 and onwards and are entitled to 50% other wages of services rendered as daily wages/muster roll as per policy of 'Equal Pay for Equal Work' during the period of muster roll. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated : December 21, 2017

नई दिल्ली, 7 फरवरी, 2018

का.आ. 274.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, बीएसएनएल और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 28/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 18/01/2018 को प्राप्त हुआ था।

[सं. एल-40011/03/2008-आईआर(डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th February, 2018

S.O. 274.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (ID No. 28/2008) of the Central Government Industrial Tribunal-cum-Labour Court Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the employers in relation to the General Manager, BSNL & Others and their workmen, which was received by the Central Government on 18.01.2018.

[No. L-40011/03/2008-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 28/2008

Date of Passing Award – 26th December, 2017

Between:

1. The General Manager,
Bharat Sanchar Nigam Limited,
Rourkela, Sundargarh.

2. The Executive Services Pvt. Ltd.,
Contractor, Plot No. 641(A), Lane-9,
Aerodrome Area, Bhubaneswar, Orissa-751 020 …1st Party-Managements

(And)

Shri Babaji Ch. Jena and Others,
Qrs No. B-55, Sector-02, Rourkela-06,
Sundargarh. …2nd Party-Workmen

Appearances:

Shri Rama Dulal Majhi	…	For the 1st Party-
SDE (HRD & Legal)		Management No. 1
None.	...	For the 1st Party-Management No. 2
Shri N.K. Mohanty,	…	For the 2nd Party- Workmen
Authorized Representative.		

AWARD

The Central Government in the Ministry of Labour in exercising its authority conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 have referred a dispute for its adjudication vide their Letter No. L-40011/3/2008 – IR(DU), dated 02.06.2008 with the following schedule:-

Whether the contract between the Management of General Manager, BSNL, Rourkela, as principal employer and M/s. Executive Security Service (Pvt.) Ltd., with regard to engagement of Shri Santosh Kumar Rout and 48 others, as per Annexure is sham and bogus ? If yes, then whether the action of the principal employer in terminating the services of the said workmen w.e.f. the dates shown against their name, is legal and justified? If not to what relief the workmen are entitled to?

In the claim statement the case of the 2nd party-Union is that the Management No. 1 Bharat Sanchar Nigam Limited (herein-after referred to as the "Principal Employer") appointed the disputants and deployed them as security guards for watch and guard of its office and branch offices, exchanges and other vital installations making a ruse and sham agreement with one agency in the name and style M/s. Executive Security Service Pvt. Limited, Berhampur, (herein-after referred to as the "Contractor"). The agreement was initially for a period of one year with effect from 01.06.2002 to 31.05.2003 and the said contract was extended from time to time till 25.3.2006. After expiry of the above agreement the Management No. 1 entered into an agreement with M/s. Chintakunta Security and Allied Services, Balaji Colony, Secunderabad for deployment of such security guards in its different establishments. It is the claim of the 2nd party-Union that neither the Management had registered its establishment as required under section 7 of the Contract Labour (Regulation & Abolition) Act (hereinafter referred to as the "Contract Labour Act") nor the contractors had obtained any license as required under section 12 of the Contract Labour Act to provide such security guards on hire to the Management No. 1. It is alleged that without complying the necessary requirements of Contract Labour Act sham and camouflage agreements were created on paper only with an intention to deprive the disputants from financial benefits and regularization of their services. Though, the disputants were appointed directly by the Management No. 1 without issue of any written appointment letters and they were paid wages directly by the Management No. 1, they were removed/disengaged from the job of security guard with effect from 31.07.2006 without compliance of the provisions of Section 25-F and 25-N of the I.D. Act when the 2nd party-Union insisted regularization of services of the disputant. According to the 2nd party-Union the disputants were disengaged on a pretext of execution of a fresh agreement with the contractor M/s. Chintakunta Security and Allied Services, who was supposed to deploy his man-power as security guards. Such agreement was also sham and camouflage to avoid the compliance of the statutory requirements. Since, the termination of the disputants was illegal and in violation of the provisions of the I.D. Act a dispute was raised before the labour machinery for such alleged illegal termination/retrenchment resulting in the present reference as stated in supra.

The Management and the contractor being noticed contested the claim of the 2nd party-Union and filed separate written statements denying the allegations raised by the disputants. It is the stand of the Management No. 1 that as per the requirement of its establishment an agreement was executed with the contractor (M/s. Executive Services) on 28.5.2002 after inviting tender in due process for supply of man-power to discharge the duty of Security Guards in its different offices, exchanges and installations. The said agreement was extended from time to time and continued till 31.07.2006. There after a new contract was executed with M/s. Chintakunta Security and Allied Services for providing security services with effect from 01.08.2006 and accordingly Security Guards were deployed by the new agency. The

willing disputant workmen, who were deployed as Security Guards under the contractor Management No. 2 tendered their resignations to the contractor and joined with the new agency. It is their contention that the disputants were not given appointment or engagement directly and there was no "employer and employee" relationship between it and the disputants. Thus, it is the stand of the Management No. 1 that the security guards were hired through the contractor and as such question does not arise on its part to terminate or retrench their services and there was no relationship of "employer and employee" between it and them. As such, the Management is no way liable for disengagement/retrenchment of the disputants. In its separate written statement the contractor M/s. Executive Security Service has supported the stand of the Management and pleaded that as it could not compete in the tender process invited after expiry of his agreement with the Management of BSNL the Management entered into an agreement with M/s. Chintakunta Security and Allied Services for such deployment of security guards. The individuals deployed through him in the various establishments of the Management No. 1 gave resignations and joined in the new agency for their deployment. After filing its written statement the contractor did not contest the claim of the disputants for which it was set ex parte.

4. On the aforesaid pleadings of the parties the following issues have been settled for just and proper adjudication of the dispute.

ISSUES

1. Whether the contract between the Management of General Manager, BSNL, Rourkela as principal employer and M/s. Executive Security Service (Pvt.) Ltd., with regard to engagement of Shri Santosh Kumar Rout and 48 others as per Annexure is sham and bogus?

2. If yes, then whether the action of the principal employer in terminating the services of the said workmen with effect from the dates shown against their names is legal and justified?

3. If not, to what relief the workmen are entitled to?

5. The 2nd party-Union has examined four disputants workmen as W.W.-1 to W.W.-4 and exhibited the documents like FOC Part-I dated 25.1.2008 of R.L.C.(C), Rourkela and copy of the letter of Shri B.C. Jena to R.L.C.(C), Rourkela dated 23.12.2006 in order to establish its claim whereas, the Management No. 1 has examined its Divisional Engineer Shri Suresh Kumar Pradhan and Accounts Officer (Cash) Shri Basanta Kumar Sahoo and filed the documents like copy of the tender notice dated 4.1.2002 inviting applications from reputed firms for engagement of security guards for watch and ward, copy of the letter dated 29.1.2002 of M/s. Executive Security Services (P) Ltd., forwarding its tender paper, copy of the minutes of TEC comprising of the members chaired by CAO met on 6.5.2002, copy of the letter of the Management to M/s. Executive Security Service Pvt. Ltd., dated 9.5.2002 for negotiation, copy of the letter of the Executive Security Services dated 15.5.2002 addressed to the Management of BSNL, Rourkela, copy of agreement between BSNL & M/s. Executive Security Services (P) Ltd., dated 28.5.2002, copy of extension of agreement dated 3.9.2005 executed between BSNL, Rourkela with M/s. Executive Security Services Pvt. Limited, copy of the bill dated 15.7.2002 and 12.1.2006 and attendance sheet with regard to engagement of security guards submitted by M/s. Executive Security Services Private Limited, copy of the agreement dated 19.01.2006 between GMTD, Rourkela with M/s., Chintakunta Security and Allied Services, copy of the salary statement dated 7.10.2009 of Chintakunta Security & Allied services, copy of the agreement dated 27.1.2010 between GMTD Rourkela & M/s. Spear Security Agency along with the list of security guards, copy of the representation of Shri Babaji Charan Jena & 21 others dated 23.12.2006 addressed to Regional Enforcement Officer (Central), copy of the letter dated 29.5.2017 of the workmen addressed to R.L.C.(C), copy of the petition dated 17.6.2007 filed before the Regional Enforcement Officer (Central) Rourkela by B.C. Jena, copy of the letter dated 18.12.2007 of M/s. Executive Security Services (P) Ltd. To the R.L.C.(C), Rourkela, copy of the failure report dated 25.1.2008 addressed to Secretary, Ministry of Labour, copy of the order EPF commissioner dated 27.12.2007, copy of license issued Contract Labour Act to refute the allegations raised by the 2nd Party-Union.

FINDINGS

6. For the sake of convenience all issues are taken for consideration simultaneously. The witnesses examined on behalf of the Union in their testimony have reiterated the stand of the Union. It has been further added by them that they were working directly under direct control and supervision of the Management No. 1 after being appointed as a casual security guard and they were disengaged by the BSNL Management without payment of retrenchment compensation and notice pay. W.W.-2 and W.W.-3 have further stated that they were not issued with any appointment letters or wage slips and they joined in the establishment of the Management on oral instruction. W.W.-4 has stated that the BSNL Management was paying wages to him and other disputants and the agreements between the contractors and the Management in regard to supply and deployment of security guards were ruse and sham documents only to circumvent the service conditions and benefits extended to its regular employees. Not a single scrap of paper relating to existence of "employer and employee" relationship has been filed by the disputant. The documents filed by the 2nd party-Union are mostly related to various correspondences made by the Secretary of the 2nd party-Union either with the BSNL Management or with the labour machinery. Those documents being unilateral are no way helpful to disclose if the disputants were recruited or employed and paid wages directly by the Management. Thus, there exists no credible and

reliable evidence except disputants oral version from which it can be safely said or inferred that Management was involved in choosing the disputants and appointed them as security guards and it was also paying their wages directly to them. On the other hand W.W.-2 has stated in his examination in chief that Sudhir Panda of the contractor was supervising their work and allotting them duty. He was not putting any attendance in attendance register of the Management. W.W.-3 has stated in his deposition that Sudhir Panda belonged to the Management of BSNL. All the workmen witnesses have admitted that they had not received any appointment letter from the BSNL Management. It cannot be over-sighted that the BSNL Management being a government undertaking must have either its own rules and circulars or to abide by the Government rules and circulars for recruitment of its employees. There is nothing in the evidence of the disputants workmen from which it can be inferred or presumed that the disputants had gone any selection test before appointed as Security Guards in the establishment of BSNL. In the above back-drops the oral evidence of the Union does not appear to be credible and acceptable to reach a conclusion that the disputants workmen were given appointments directly by the Management or they were receiving their wages from it.

Law is well settled in the case between General Manager (OSD), Bengal Nagpur Cotton Mills Rajnandgaon –versus- Bharat Lal & Another in Civil Appeal No. 10605 of 2010 that there are two tests to find out whether the contract labourers are the direct employees of the principal employer and the tests are (i) whether the principal employer pays the salary instead of contractor and (ii) whether the principal employer controls and supervises the work of the employees. It is also well settled that if a particular fact has been pleaded by a party in a suit in the court of law, which is denied by the rival party, unless there is a specific provision under any law to shift the burden, the party who advances such pleading is required to establish the same. Once the fact pleaded by a party is established by credible evidence, the burden shifts to the rival party to deny the existence of such fact. When the disputant workman have claimed reliefs against the BSNL Management pleading that the contract, if any, between the Management of BSNL and the contractor was sham and camouflage, duty is cast upon them to establish the said fact. They have also claimed a relief of their reinstatement with back wages and all financial benefits.

Further, as a matter of settled principle as set-out by the Hon'ble Apex Court in the case between the Range Forest Officer –versus- S.T. Hadimani reported in AIR 2002 SC 1147 and in the case of Krishna Bhagya Jala Nigam Limited –versus- Mohammed Rafi in Civil Appeal No. 2895/2009 the initial burden lies on the disputants to prove their engagement by the principal employer i.e. Management of the BSNL. Mere affidavit of the workmen in that regard is not sufficient for any Court or Tribunal to come to the conclusion that in reality there exists "employer and employee" relationship between the parties. Be that as it may, the evidence of the 2nd party-Union is totally beyond credible and the same is inadequate to disclose the existence of any relationship of "employer and employee" between the Management and the disputant-workmen. The fact that the security guards were deployed at the instance of the BSNL Management and the said Management was supervising their work are not sufficient itself to establish the relationship of "employer and employee". In the case of Air Port Authority of India –versus- International Air Cargo Union 2009 (13) SCC 374 the Hon'ble Apex Court have defined the expression "controlled and supervision" by quoting as follow:-

"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

The principal employer only controls and directs the work to be done by the contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contactor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

If the evidence of the 2nd party-Union more particularly the oral evidence of the witnesses are examined carefully and taken into consideration, the same has not established in any manner that the BSNL Management had engaged the disputants directly or it was making payment of wages to them directly. Being a principal employer and hiring the disputants through contractors to do the work of security guards, there is nothing unusual on its part to give necessary direction or to supervise or control the work done by the disputants. It is in the evidence of the Management that tender was invited through public notice for supply of security guards to keep watch and ward on its various establishments and pursuant to such tender the contractor provided the disputants for their deployment as security guards. In that regard the Management have exhibited the copy of the notice inviting the tender (Ext.-A) and copy of the agreement entered between the parties (Ext.-F). There is nothing in the cross examination of the management witnesses from which the genuineness of these documents and their execution can be doubted. Mere fact that the Management failed to produce any registration under section 7 of the Contract Labour Act and license of the contractor usually issued to him under section 12 of the said Contract Labour Act would not lead to a conclusion that the agreement for supply of such contract labour was a sham and bogus document. The said fact is not also sufficient to say that in reality the disputants were direct employees of the Management. There is also no settled principle or provision under the Contract Labour Act that

in case of non-compliance of the requirements of Section 7 and 12 of the Contract Labour Act will automatically lead to a conclusion that the so-called contract labourers are deemed to be the employees of the principal employer.

9. On a close reading of the statement of claim it is found that the pleadings advanced in the statement are not consistent with the oral evidence adduced by the witnesses. Some of the pleadings made in the statement of claim itself contradict the stand of the Union. When the Union has admitted in its claim statement that the BSNL Management entered into contract/agreement with the contractors for deployment of security guards, a heavy burden lies on it to show that such agreements were in existence on paper only and the entire deal in that regard was a camouflage. It is not explained by any of the witnesses of the Union as to how such agreement would be counted as a sham and bogus. It is emerging from the evidence of the parties that E.P.F. & E.S.I contributions were deducted from the wages of the disputant. The documents relating to such contribution would have established as to who was making payment of wages to the disputants. The 2nd party-Union could have called for those documents either from the authority of E.P.F. and E.S.I. or from the Management of BSNL. No such effort was taken by the Union to establish its claim.

Without adducing any credible evidence to establish the employer and employee relationship the 2nd party-Union has strenuously contended that in view of the principles set out by the Hon'ble Apex Court in the case between Steel Authority of India Limited and others –versus- National Union Water Front Workers and others reported in 2001 (7) SCC the termination/retrenchment was bad in law and the Management is required to reinstate the disputants with back wages and all financial benefits and the Management is duty bound to regularize their services. To strengthen their argument reliance has been placed on some other reported decisions like Gujarat Electricity Board, Thermal Power Station, Ukai –versus- Hind Mazdoor Sabha and others reported in AIR 1995 SC 1893, Air India Statutory Corporation and Others –versus- United Labour Union and others reported in (1997) 9 SCC 377. On a close reading of those decisions it is apparent that the findings and principles made by the Hon'ble Apex Court in those cases are not relevant to the present one since the facts and circumstances of those decisions are clearly distinguishable with the facts and circumstances of the present one. In those cases a notification under section 10(1) of the Contract Labour Act was issued by which contract labour system was abolished in respect to certain works in those Managements for which the contract labourers raised a demand for regularization of their services. In the case at hand there is neither any notification under section 10(1) of the said Act prohibiting engagement of contract labourer nor it is established that any contract/agreement for providing labour force is sham and camouflage. That apart the term of reference does not require the Tribunal to decide if the services of the disputant workmen is to be regularized in case the contact between the parties are being found a bogus one. It is pertinent to mention here that in the case of Steel Authority of India Limited and Others mentioned in supra the dispute was with regard to regularization of contract labourers as a notification under section 10(1) under the Contract Labour Act was issued by which the Management was prohibited to take service of contract labourers in respect to certain nature of works. In the case of Gujarat Electricity Board the dispute was raised for absorption of contract labourers after abolition of contract labour system. The consistent pleadings of the disputant workmen in the said case was that they were the employees of the Management and the contract between the Management and the contractors being sham and camouflage they are deemed to be the employees of the Gujarat Electricity Board and in the event of abolition of Contract Labour they are to be absorbed by the Management. In the case of Air India Statutory Corporation the disputants claimed themselves to be the employees of the Corporation in view of the Society being formed at the instance of the Management and the Management was making payment of wages to them through the Society. In the said case there was also a notification under section 10(1) of the Contract Labour Act. But, in the case at hand there is no notification under section 10(1) of the Contract Labour Act prohibiting engagement of Security Guards by hire through contractor. Hence, the decisions and principles set-out in those decisions are no way relevant and helpful for deciding the fate of the present one more particularly, when the disputants have failed to establish the "employee and employer" relationship between them and the Management. The onus to prove such relationship is always on the disputants if the Management denies existence of such relationship.

There is no denial that when industrial adjudicator finds that contract between principal employer and contractor to be sham, nominal and merely a camouflage to deny employment benefits to the employees and that there was infact a direct employment, the Tribunal can grant relief to the employees by holding the workmen as direct employee of the Principal Employer. In this regard the observation made by the Hon'ble Apex Court made in the case of International Airport Authority of India is as follow:-

''....the exclusive authority to decide whether the contract labour should be abolished or not is that of the appropriate Government under the said provision. It is further not disputed before us that the decision of the Government is final subject, of course, to the judicial review on the usual grounds. However, as stated earlier, the exclusive jurisdiction of the appropriate Government under Section 10 of the Act arises only where the labour contract is genuine and the question whether the contract is genuine, or not can be examined and adjudicated upon by the court or the industrial adjudicator, as the case may be. Hence in such cases, the workmen can make a grievance that there is no genuine contract and that they are in fact the employees of the principal employer.

If the contract is sham or not genuine, the workmen of the so called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the

conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so fit the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2(k) of the I.D. Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under section 10 of the Act."

12. Keeping the above observations of the Hon'ble Apex Court in view if the evidence of the 2nd party-Union is taken into consideration it can be safely be said that the Union has miserably failed to produce any credible and authentic evidence from which it can be safely said that this Tribunal is competent to say that the work of security of the establishment of the Management being perennial in nature contract labour cannot be engaged to carry out the said work and such work being prohibited under section 10 of the Contract Labour Act, the so-called contract labourers are entitled to be absorbed in the establishment of the Management. If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When it is already found that the contract or the agreement between the BSNL Management and the contractor is not found sham and camouflage and there exists no employer and employee relationship between the disputant and the BSNL Management and notification under section 10(1) of the Contract Labour Act is wanting, there is hardly any scope for the Tribunal to direct the BSNL authority to reinstate and to regulate the services of the disputants as claimed in the Statement of claim. Further-more it cannot be over-sighted from the terms of reference that the Management of BSNL has been identified as principal employer and had it been so question does not arise on its part to terminate or to retrench the disputants from their services.

13. However, it cannot be over-sighted that the pleadings and the evidence of the Management do not dispute seriously that the disputants were deployed through the contractor M/s. Executive Security Services as security guards to keep watch and ward in the various establishment of the BSNL Management and in the event of execution of fresh agreement with another contractor in the name and style M/s. Chintakunta Security and Allied Services the disputants were disengaged/retrenched. There is no evidence on behalf of the Management to show that provisions of Section 25-F were complied with. The statement of workman witnesses in this regard is not also seriously confronted by the Management. Evidence is also wanting on the record to hold that those disengaged workmen were aware of the period of their employment i.e. their appointment as Security Guard would be completed on the expiry of the period of agreement between the BSNL Management and the contractor. In the above facts and circumstances it cannot be denied that they are entitled to receive retrenchment compensation and notice pay from their employer contractor M/s. Executive Security Services through whom their services were hired. In that regard the Management of BSNL has limited liability as Section 21(4) of the Contract Labour Act makes them liable only for unpaid wages to the contract labourer. Thus, they have no relief against the Management of BSNL.

Before parting with the award I am constrained to observe that such nature of disputes are rising day by day in view of practices of contractual engagement through outsourcing agency in various industries has increased enormously. It is universally seen that individuals, who are employed on contractual basis through the out-sourcing agency, work for a considerable period in a particular industry/department whereas, the contractors through whom he was deployed in the industry or department are changed from time to time in the event of fresh agreements between the principal employer (industries) and the contractor (outsourcing agencies). In the event of such changing of contractors/outsourcing agency though the contractual worker has no right to continue in the service, he was allowed to continue in service under the new contractor either on the request of the principal employer or on the interest of the contractor. At times job of such contractual worker ends abruptly without compliance of the provisions of Section 25-F and 25-G of the I.D. Act and such individual contract worker has no remedy either from the principal employer or from the contractor as no provisions is available in the I.D. Act to deal with such a situation. Therefore, it is felt necessary to bring certain changes in the law for the interest of such employees engaged through outsourcing agencies so as to enable them to either get compensation for such sudden disengagement due to change of contractor or for a provision to allow them to continue in such service of the principal employer when such employer continues to take assistance of outsourcing agency/contractor to carry out its day to day function. The Ministry appears to be the appropriate authority to ponder and to take appropriate action in the matter.

14. For the reasons mentioned above the Management of BSNL cannot be held liable in regard to retrenchment or disengagement of the disputant workmen and as such, the workmen are not entitled to any relief from the said Management. However, the disputant workmen may approach the Management of BSNL for giving them preference in deployment of security guards engaged through the contractors and the BSNL Management may do their best to accommodate them in the deployment of Security Guards in its various establishment by insisting the outsourcing agency by incorporating a clause in this regard in the agreement to be executed with the outsourcing agencies from time to time.

15. The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 7 फरवरी, 2018

का.आ. 275.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, बीएसएनएल, गोरखपुर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 63/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.02.2018 को प्राप्त हुआ था।

[सं. एल-40011/16/2008-आईआर(डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th February, 2018

S.O. 275.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (ID Case No. 63/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the General Manager, BSNL, Gorakhpur and their workmen, which was received by the Central Government on 02.02.2018.

[No. L-40011/16/2008-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 63 of 2008

Between :

Mukhram S/o Late Sri Sudama Ram,
Mohalla Azad Nagar, Sector 2,H.S 121
Gorakhpur.

Versus

The General Manager,
Bharat Sanchar Nigam Ltd.,
GORAKHPUR.

AWARD

1. Central Government, Mol, vide notification no.L-40011/16/2008-IR(DU) dated 21.07.2008 has referred the following dispute for adjudication to this tribunal.
2. Whether the action of the management of the General Manager, Bharat Sanchar Nigam Limited, Gorakhpur, in imposing the penalty of compulsory retirement on their workman Shri Mukhram w.e.f 21/11/2001 is legal and justified? If not, to what relief the workman is entitled to?
3. In short the case of the worker is that he joined the department i.e. BSNL on 07.12.67, and worked with full devotion to the maximum satisfaction of his superior and he never thought in slightest manifestation to misappropriate the government money. It is further stated that for this allegation he met the loss good by depositing the entire loss amount. It is further stated he was suspended and then caused to compulsorily retire from the government service and this was the most ill fateful event in the career of the worker. He has further stated that for a single offence the applicant has been implicated thrice and the misappropriated amount caused to be deposited and then he was suspended and subsequently compulsory retirement was imposed upon him. He assailed the action of the management before the Hon'ble High Court, Allahabad, where the applicant / worker was directed to raise the issue before appropriate forum / labor court to adjudicate the issue. The matter was heard by the authority on several dates and ultimately the authority by order dated 24.01.08 directed the management to reconsider the case of the worker within six week from the date of the order. In the end it has been alleged by the worker that he has no grudges against any colleagues or senior and it is most humbly submitted that the management should reconsider the reinstatement of the worker.
4. It is also the case of the worker that he was issued minor penalty charge sheet on 20.05.98 for certain acts of omission and commission under Rule 16 of CCS (CC&A) Rules, 1965, by the disciplinary authority and no action was taken on this charge sheet and yet again the disciplinary authority again issued major penalty charge sheet dated

18.01.99 and he was also placed under suspension by the disciplinary authority by order dated 28.10.98. As the worker did not submit any reply to the charge sheet a regular inquiry was instituted against him by the disciplinary authority in which he participated and the inquiry officer submitted his findings on 07.08.01 and lastly the disciplinary authority after considering the entire record of the inquiry and findings of the enquiry officer Imposed punishment of compulsorily retirement on the worker by order dated 21.11.02. The appeal preferred by the worker also failed.

5. Besides above facts, the worker has challenged the action of the management on a number of grounds such as entire misappropriated amount had already been deposited; for a single offence more than heavy penalty has been imposed thus double jeopardy and against natural justice; he was illegally retired from the service compulsorily; and because every government servant wishes to honourably retire from the service whereas in his case he was caused to compulsorily retire.
6. Lastly it has been prayed by the worker that punishment of compulsorily retirement imposed upon the worker may be set aside and he be deemed to be in service with full back wages and all consequential benefits as in his case principles of natural justice has been flouted badly and he has not been able to get justice at the hands of the department.
7. The management filed their reply wherein it is pleaded that the statement of claim being defective be rejected and the worker is not a workman as defined under section 2(s) of the Act. The present dispute is not a dispute covered under section 2-A of the Act. It is stated that prior to infliction of the punishment upon the worker he was posted at cash counter to collect the deposit for new telephone connection as well as the payments of telephone bills of working telephones. The worker adopted fraudulent activity by keeping the government money which is a fraud of serious nature and the worker was placed under suspension on 28.10.98 for committing misappropriation of government money.
8. The first article of charge memo dated 30.06.98 is to the effect that Sri Mukhram Sr. TAO of General Manager, District Gorakhpur while working at cash counter of the TD (now GMTD) Gorakhpur, adopted fraudulent activity by keeping money with him with effect from 13.1.98 to 31.03.98. Thus he cheated the government as well as subscribers and put the government in loss of revenue. By this act he did not maintain the absolute integrity, devotion to duty and acted unbecoming of a government servant and violated Rule 3-1(i), (ii) and (iii) of CCS Conduct Rules, 1964.
9. The second charge memo dated 18.01.99 is to the effect that Sri Mukhram Sr. TOA while working at cash counter of the TDM Office Gorakhpur adopted fraudulent activities by keeping government money with him with effect from 02.03.98 to 17.04.98. Thus he cheated the government as well as subscribers and put the government in loss of revenue. B this act he did not maintain ABSOLUTE INTEGRITY DEVOTION TO DUTY AND ACTED UNM\BECOMING OF A GOVERNMENT SERVANT AND VIOLATED Rule 3-1(i), (ii) and (iii) of CCS Conduct Rules, 1964.
10. On the basis of above allegations a regular departmental inquiry was instituted by the disciplinary authority by appointing enquiry officer and presenting officer. The worker in his statement of claim has clearly admitted that he did not submit any reply to the allegations of the charges. It is submitted that the worker was given full opportunity of his defence and documents as called for were provided to him by the enquiry officer as well as department. Rules of natural justice has not been flouted by the enquiry officer while conducting domestic inquiry and the disciplinary authority after giving anxious considerations to the inquiry record and inquiry report has rightly imposed the punishment upon the worker. There is no illegality in the conduct of domestic inquiry and that the worker preferred an appeal against the punishment order before the appellate authority and the appellate authority has rightly rejected the appeal on merit. Consequently worker is not entitled for any relief and his claim is liable to be rejected.
11. Worker has also filed rejoinder but nothing new has been stated therein except reiterating the facts already pleaded by him in his claim petition.
12. In the instant case both the parties have filed documents which shall be addressed at the appropriate stage.
13. After exchange of pleadings between the parties preliminary issue with regard to the domestic inquiry conducted by the management was framed on 08.05.12 which is to the effect whether domestic inquiry held by the management is just and fair or not?
14. The worker appeared and examined himself as w.w.1 on preliminary issue and on behalf of the management Sri Shanker Prasad enquiry officer has been examined by the management on the preliminary issue.
15. After hearing the parties on preliminary issue and after going through the record the issue was decided against the management holding that domestic inquiry against the worker cannot be held to be legal and proper and accordingly it was vitiated by order dated 10.02.15. It was clearly observed that the enquiry officer has not collected any evidence for ascertaining the fact that charges are proved against the worker or not and it was also held that the enquiry officer has simply examined the worker and submitted his inquiry report against the worker and did not tried to examine the persons from whom it is alleged that the worker has taken money and total loss of Rs.5 lacs could not be verified by the enquiry officer due to non availability of receipt books and he has also deposed in h is cross examination that he cannot say that the charges are proved because records were not available and he has opined this fact in his report.
16. Management was given opportunity to prove the charges on merit of the charges as domestic inquiry w2as held to be vitiated.

17. Management has examined M.W.2 Sri R L Tripathi who was presenting officer in the domestic inquiry and he has deposed in his cross examination that the worker was given two charge sheets one in the year 1998 and second in the year 1999. First charge sheet was given under rule 14 and second was given under rule 16. Witness has further stated that he does not remember whether the alleged amount has been deposited before issuance of charge sheet or not. He does not remember whether worker was given list of witnesses or not. He does not remember whether worker has given alleged amount to the cashier Sri Kant Mishra or not. He further alleged that it is not in his knowledge that the worker has deposited the alleged amount. Worker was issued first charge sheet on the complaint of one Mr. Dass who was customer of the department. He does not remember whether Mr. Dass has given any written complaint or not. He further alleged that he does not remember whether inquiry was vitiated against the worker on the written complaint.
18. The charge sheet was given to the worker for keeping the amount with him with effect from 13.01.98 to 31.03.98 and in support of the charge as discussed above, Presenting Officer who has been examined by the management has not supported the version of charge sheet but has shown his ignorance to every fact as is clear from his cross examination. It appears that this witness has not supported the version of the charge sheet and has also not deposed against the worker. Same position applies to the enquiry officer who has been examined by the management in support of preliminary issue who has clearly stated that he has given his report stating that as records are not available charges cannot be held to be proved.
19. On perusal of inquiry report submitted by this witness Shanker Prasad it appears clearly that he has opined that charges of total loss to the tune of Rs./ 5 lacs of government money leveled in charge sheet could not be verified due to non submission of receipt book by Sri Mukhram. It has also been mentioned that all the amount of security deposited from the parties from time to time but none of the witness has been examined by the enquiry officer in the inquiry nor has examined any of the witness before this tribunal to prove charge whose money was alleged to be not deposited. Secondly several documents were collected during the inquiry which were not proved by any witness in domestic inquiry nor has management tried to prove those documents before this tribunal. It is natural law that a document cannot be read unless it is proved by cogent evidence. On the report of the enquiry officer the disciplinary authority has punished the worker without considering the fact that no witness is in support of facts leveled in the charge sheet or to prove documents has been examined by the enquiry officer and punishment order was passed simply on the statement of worker recorded in the domestic inquiry. Disciplinary authority has further failed to appreciate the findings of the enquiry officer that the charges of total loss of Rs.5 lacs could not be verified due to non submission of record and further enquiry officer has also stated that the charges against the worker were not proved.
20. In the last having concluded that the management has not been able to prove the charges before the tribunal the resultant effect would be that the punishment order and the appellate order passed by the management is not sustainable in the eye of law and is liable to be set aside. Accordingly both the orders passed by the disciplinary authority imposing of punishment compulsorily retirement from service upon the workman and the order passed by the appellate authority is set aside.
21. The worker therefore is held entitled for symbolic reinstatement in the service of the management from the date he was compulsorily retired i.e. w.e.f. 21.11.2001. Worker has already attained the age of superannuation as admitted to both the parties.
22. The worker is further held entitled for full back wages till the date of his retirement from the date of punishment order. The worker is also held entitled for gratuity, leave encashment, provident fund and the amount of pension commutation from the date of his retirement.
23. The reference is therefore, answered in favor of the worker and against the management.

SHUBHENDRA KUMAR, Presiding Officer

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